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Interpreter:

MS. LIBIA CLANCY

1 (Proceedings commenced at 11:47 a.m.)

2 THE CLERK: Criminal cause for sentencing *United*  
3 *States of America vs. Josue Flores Carreto, Gerardo Flores*  
4 *Carreto and Daniel Perez Alonso.*

5 At this time, I ask the parties to state your  
6 appearances for the record.

7 MS. RYAN: Good morning, Your Honor. Monica Ryan  
8 for the United States, along with Anne Milgram, Special  
9 Assistant United States Attorney, and Hilary Axam, a trial  
10 attorney from the Department of Justice.

11 MS. MILGRAM: Good Morning, Your Honor.

12 MS. AXAM: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. KULCSAR: Good Morning, Your Honor, with  
15 profound apologies for being so late. Roy Kulcsar for Josue  
16 Flores Carreto.

17 MR. MUSA-OBREGON: Your Honor, on behalf of Gerardo  
18 Flores Carreto, Michael Musa-Obregon.

19 MR. HOCHBAUM: For the defendant, Daniel Perez  
20 Alonso, Charles Hochbaum. Good morning, Your Honor.

21 THE COURT: Good morning everybody.

22 You know, we're going to have a probably pretty  
23 lengthy proceeding here because we have three defendants and  
24 they're looking at substantial time and we have about six  
25 victims who want to also make comments, so that's going to

1 all take a good deal of time, let alone going through the  
2 advisory guideline calculations.

3 I think probably the best way to start will be to  
4 hear from the victims. I guess we could do that in the first  
5 instance, unless anybody has any serious objection to that.

6 MR. HOCHBAUM: Well, Judge, I believe that the  
7 defense has some matters they would like to place on the  
8 record before we do that.

9 THE COURT: Well, that's one thing we can do also,  
10 but the victims do have the right to comment. So, they're  
11 going to be given a chance.

12 MS. RYAN: Your Honor, I --

13 THE COURT: What's your preference, Ms. Ryan?

14 MS. RYAN: Your Honor, I think we would prefer to  
15 wait. We've explained to the victims that it's their right  
16 to speak or not to speak and I think they may feel more  
17 comfortable after hearing what --

18 THE COURT: So --

19 MS. RYAN: -- some things that may be said in court  
20 today.

21 THE COURT: All right. Well, you know, I have the  
22 discretion to do it, you know, at the beginning, in the  
23 middle or at the end.

24 MS. RYAN: Of course, Judge.

25 THE COURT: So, and that's apparently Mr.

1 Hochbaum's preference as well, I take it, so we'll proceed  
2 then with making our advisory guideline calculations in the  
3 first instance and to talk, in the course of doing that,  
4 about all issues that need to be addressed. How is that?

5 MS. RYAN: That's fine. Thank you, Your Honor.

6 THE COURT: All right.

7 MR. HOCHBAUM: Judge, prior to going into the  
8 advisory guidelines, it seems to me that there are some  
9 issues that --

10 THE COURT: We have some motions will have to be  
11 disposed of.

12 MR. HOCHBAUM: That's correct, Judge.

13 THE COURT: Right.

14 MR. HOCHBAUM: With regard to that -- let me know  
15 when you're ready.

16 THE COURT: Pardon?

17 Is there any problem hearing me? I have the  
18 microphone on. Is there any problem hearing me?

19 MS. DANDRIDGE: That's okay.

20 THE COURT: Okay.

21 The microphones are on, since this is being taken  
22 by ESR, so we need the microphones. You don't have to get  
23 too close to them because if you do, there will be some  
24 feedback. My own preference is not to use the microphones  
25 for that reason, but when we have ESR, we have no choice in

1 the matter. Okay?

2 All right. Now, so let's first address the  
3 motions. What motions are pending in behalf of your client,  
4 Mr. Hochbaum, and you represent --

5 MR. HOCHBAUM: Daniel Perez Alonso, Judge.

6 THE COURT: Daniel Perez Alonso.

7 MR. HOCHBAUM: Yes, Judge, and just so the record  
8 is clear, I got retained late in March of this year to  
9 represent the defendant for sentence. I've had meetings with  
10 the defendant. Subsequent to this day's proceeding, it is my  
11 understanding that the defendant, along with the other  
12 defendants, filed a motion to withdraw his plea of guilty.

13 THE COURT: I have that collective motion on behalf  
14 of all the defendants.

15 MR. HOCHBAUM: Right.

16 THE COURT: Any other motions?

17 MR. HOCHBAUM: Well, Judge, it's my understanding  
18 after conference with co-counsel that materials that are  
19 instrumental to a determination in this case both of the  
20 guilty pleas and of any subsequent sentencing proceeding, if  
21 in fact the guilty pleas are not withdrawn, has been provided  
22 to us today. Those materials consist of transcripts of  
23 proceedings involving some of the victims in trials in  
24 Mexico.

25 Maybe one of my co-counsel can speak more

1 specifically towards this. He's actually read them and  
2 they're in Spanish.

3 MR. MUSA-OBREGON: Your Honor, on behalf of Gerardo  
4 Carreto Flores. This morning I -- upon arriving in court, I  
5 met with an investigator that was hired by all three  
6 defendants collectively. That investigator is a gentleman by  
7 the name of Willie Acosta. Mr. Acosta was working for the  
8 defendants without the supervision of counsel and he went to  
9 Mexico over the last month.

10 He had contacted all three of the defense lawyers  
11 and indicated to us previously that there were -- there  
12 existed some transcripts from a proceeding in Mexico that  
13 contained exculpatory information with respect to the  
14 statements that were made by the -- three of the victims in  
15 the proceedings here that were also taken in Mexico.

16 We urged -- all three counsel urged the  
17 investigator that if these transcripts indeed existed to  
18 bring them to our attention and bring them to us immediately.

19 Last night I received a call at about 10:30 at  
20 night from the investigator where he called me generically,  
21 but did not mention that these transcripts existed until I  
22 directly asked him "Well, do you have these transcripts?" He  
23 said, "Yes."

24 I then made arrangements to -- for him to bring  
25 them to court this morning. Upon my arriving, I perused the

1 transcripts and it does appear -- they do appear to have  
2 sworn statements of fact by three of the victims in this case  
3 where they directly contradict their position before the  
4 government --

5 THE COURT: That was down in Mexico, you see.

6 MS. RYAN: Yes --

7 MR. MUSA-OBREGON: In Mexico.

8 THE COURT: They probably --

9 MS. RYAN: Your Honor, if I can --

10 THE COURT: They probably --

11 You don't have to --

12 MS. RYAN: Thank you.

13 THE COURT: -- they're probably scared to death  
14 when they did that.

15 Look aside from that, I do recall that your clients  
16 pled guilty, g-u-I-l-t-y. Right. And that happened back not  
17 too long ago. Well, it did happen a long time ago on April  
18 5th, 2005. And, boy, I read over the transcript of those  
19 proceedings very carefully. Not to pat myself on the back,  
20 you know, too hard because I don't want faint from the  
21 process. It's about the best plea allocution I ever took in  
22 my distinguished 11 plus years on the bench.

23 Why? Because I know that there's going to be a  
24 life subsequent to my sentence. Not that your clients don't  
25 have the right to appeal, okay? But everything suggested to



1       this wise Judge that I should, you know, use every  
2       prophylactic lawful means at my disposal to minimize the  
3       potential of 2255 collateral applications raising issues on  
4       appeal and indeed, in raising issues before me today which  
5       we'll discuss.

6               So, when I read over the plea allocution, I said,  
7       "Boy, Judge Block, you did a good job." Okay, but they all  
8       pled guilty. So if they had all this information and they  
9       knew what happened in Mexico, why pray tell did they plead  
10      guilty?

11             Do you have a good answer for that, Mr. Kulcsar?

12             MR. KULCSAR: Your Honor, as I'm sure Your Honor  
13      remembers, I was not counsel for Josue --

14             THE COURT: Well, but I'm giving you an opportunity  
15      to respond to that question, if you would like. Do you have  
16      an answer to that first?

17             MR. KULCSAR: Well, Your Honor --

18             THE COURT: If not, then Mr. Musa-Obregon, do you  
19      have an answer to that question?

20             MR. MUSA-OBREGON: Yes, Judge, I don't know if I  
21      have an answer to that. It's a complex --

22             THE COURT: All right.

23             MR. MUSA-OBREGON: -- question, but I have a  
24      response and that is that being intimately familiar with the  
25      proceedings down -- before the pleas were taken, defense

1 counsel -- the position that Mr. Carreto would like me to  
2 advance at this point, and I'm doing this at his request, is  
3 that --

4 THE COURT: Well, you're doing the best job you can  
5 as his counsel. They're up against it. We understand that.  
6 Go ahead.

7 MR. MUSA-OBREGON: He had us ask -- the defense  
8 lawyers ask the prosecutors whether the women were  
9 maintaining this position against the defendants with respect  
10 to the violence, with respect to the forced prostitution, et  
11 cetera, et cetera. And we specifically asked if there  
12 existed any types of indications that their position had been  
13 different.

14 THE COURT: It doesn't affect their guilty plea.  
15 You think I should consider it on the issue of sentencing and  
16 shouldn't give any credibility to those three people? You  
17 know, is that what you're suggesting? They still pled guilty  
18 to all counts.

19 MR. MUSA-OBREGON: In the alternative, I would  
20 suggest that, Judge. I think --

21 THE COURT: Okay. I'll take it under advisement.

22 Mr. Hochbaum, do you wish to say anything?

23 MR. HOCHBAUM: Judge, my client feels that in light  
24 of the information, and it's obviously a problem for us that  
25 it came so untimely, that it raises significant issues. With

1       regard to the guilty plea, my client's position was that --

2               THE COURT:   Okay.

3               MR. HOCHBAUM:  -- he did not get appropriate advice  
4       from his prior attorney, which is one of the reasons we wrote  
5       a letter to you in January of '06 with regard to that  
6       attorney and why I was subsequently retained.

7               So I have reviewed the transcript of the plea, but  
8       I have not -- was not a party to the plea.

9               THE COURT:   Well, of course.

10              MR. HOCHBAUM:  And my client's proposition is that  
11       this information changes dramatically the position of all  
12       parties with regard to the guilty plea and that he should be  
13       allowed the opportunity --

14              THE COURT:   So, with that information, you would  
15       have counseled him to have gone forward with the trial.  And  
16       you think that that's the counsel you would have given him at  
17       that time?  If you were the lawyer, not Mr. Lashley?

18              MR. HOCHBAUM:  I think it's --

19              THE COURT:   Is that what your position is?

20              MR. HOCHBAUM:  My position is that it's likely that  
21       I would have entered into further negotiations --

22              THE COURT:   I see.

23              MR. HOCHBAUM:  -- and potentially advised him that  
24       these transcripts and the statements of the witnesses down  
25       there may have a -- might have had a significant impact on

1 whether or not there would have been a determination --

2 THE COURT: Do you have --

3 MR. HOCHBAUM: -- of guilt.

4 THE COURT: -- any reason why they pled guilty? I  
5 mean we went through an elaborate proceeding. How many pages  
6 is this?

7 MR. HOCHBAUM: Well --

8 THE COURT: Eighty-some-odd pages. Have you read  
9 the transcript?

10 MR. HOCHBAUM: I have read the transcript.

11 THE COURT: Pretty good, huh? You know Judge  
12 Block. You agree with me that's one of my better proceedings  
13 I've ever conducted in 11 plus years?

14 MR. HOCHBAUM: Well, Judge, I tried cases --

15 THE COURT: I don't want you to make an admission -  
16 -

17 MR. HOCHBAUM: -- in front of you.

18 THE COURT: -- against interest. You realize --

19 MR. HOCHBAUM: I certainly agree with the Court  
20 that the Court covered those important issues that are --

21 THE COURT: Is there anything I did not cover? I  
22 mean, you know, I pride myself in doing a good job.

23 MR. HOCHBAUM: Well, it appears according to the  
24 defendants that there was some question as to whether or not  
25 the Court advised the defendant with regard to his right to

1       testify during the trial. I did not see that --

2               THE COURT: Right.

3               Well, did you read --

4               MR. HOCHBAUM: -- in the transcript.

5               THE COURT: You read the transcript.

6               MR. HOCHBAUM: I did, Judge.

7               THE COURT: Do you agree with that assessment? Do  
8       you think Judge Block did advise him of his right to testify?

9               MR. HOCHBAUM: I believe that the defendant's  
10       constitutional rights were adequately advised under the  
11       standards set forth, Judge. However --

12              THE COURT: So on page 45 of the transcript, the  
13       Court said, "At the trial, while you would have the right to  
14       testify if you wish to do so, you could not be required to  
15       testify." Then we explained his Fifth Amendment right. So,  
16       maybe your client is in error about that, but people make  
17       mistakes.

18              MR. HOCHBAUM: That may be true, Judge, but it  
19       seems to me that --

20              THE COURT: Ms. Ryan can't wait to talk. She  
21       doesn't think I'm doing --

22              MS. RYAN: Your right, Judge.

23              THE COURT: -- an adequate job. But you're doing a  
24       good job for your clients. I understand all that, but their  
25       -- they accepted responsibility. They pled before the Court.

1 Anything else you wish to say about your motions?

2 MR. MUSA-OBREGON: Well, Your Honor --

3 THE COURT: Let's go on. Let's move it along.

4 They're kind of silly. Let's go on.

5 MR. MUSA-OBREGON: With the expectation that Your  
6 Honor will deny this request, I would, at this point --

7 THE COURT: Right.

8 MR. MUSA-OBREGON: -- request the opportunity to  
9 review these transcripts and --

10 THE COURT: You can do whatever you want to do.  
11 Your motion is silly. It's going to be denied.

12 Ms. Ryan, go ahead.

13 MS. RYAN: Your Honor, I just wanted to put one  
14 fact on the record. I think --

15 THE COURT: Just make a record here. We're making  
16 a record. It's going to be reviewed by other authorities.

17 MS. RYAN: Exactly.

18 THE COURT: The motion's going to be denied. What  
19 do you want to say?

20 MS. RYAN: Thank you, Your Honor. Obviously, the  
21 government's in complete agreement with Court about the --

22 THE COURT: Do you wish to add anything?

23 MS. RYAN: Yes.

24 THE COURT: To these claims here of this sudden  
25 appearances of some other statements arguably in Mexico.

1 MS. RYAN: I have a few points. First, the  
2 government hasn't seen any of these materials.

3 THE COURT: Right.

4 MS. RYAN: But, I do have some expectations about  
5 what they might contain, only because everyone in this  
6 courtroom knows that both the defendants and the victims have  
7 all been in this country at least since January of 2004 when  
8 they were all arrested by Immigration and Customs  
9 Enforcement.

10 THE COURT: By the way, do you have any of these  
11 so-called documents?

12 MR. MUSA-OBREGON: Yes, Judge. They --

13 MR. HOCHBAUM: Transcripts we have --

14 MR. MUSA-OBREGON: They were provided --

15 THE COURT: Okay.

16 MR. MUSA-OBREGON: -- to us and they look  
17 authentic.

18 THE COURT: You haven't given them to the  
19 government though, have you?

20 MR. MUSA-OBREGON: No, I just received them --

21 THE COURT: Just received.

22 MR. MUSA-OBREGON: -- moments before coming into  
23 court.

24 THE COURT: Moments before the sentencing.

25 What else, Ms. Ryan?

1 MR. KULCSAR: They're in Spanish apparently also,  
2 Your Honor, obviously.

3 THE COURT: Moments before the sentence you had --  
4 this --

5 MR. MUSA-OBREGON: Well, Your --

6 THE COURT: -- plea was taken a year ago and just  
7 on the eve of sentence, these things appear, but it doesn't  
8 affect the fact that they pled guilty.

9 Go ahead, Ms. Ryan.

10 MS. RYAN: Exactly, Your Honor, and I'd like to  
11 point out that I think even if these documents contain  
12 anything that the defendants might deem helpful, it's legally  
13 irrelevant to this case. The defendants pled guilty to  
14 smuggling these young women into the United States and  
15 forcing them into prostitution in New York --

16 THE COURT: They did plead guilty to those things,  
17 right? --

18 MS. RYAN: Clearly after they had left Mexico. And  
19 obviously as the Court's already recognized the government's  
20 position that whatever statements may have been made by any  
21 of these victims in Mexico were done at the coerced efforts  
22 of the defendants.

23 THE COURT: All right, now, in terms of processing  
24 the matter because, you know, we have to be very careful  
25 because the defendants are going to go to jail for a long



1 time in all probability, though I haven't made that  
2 determination yet, we can anticipate that this will be  
3 furthered -- this proceeding will have another chapter to it,  
4 so to speak, and that may be on the Court of Appeals. So, we  
5 want to make a very good record. A very clear record.

6 Maybe we should give the defense an opportunity to  
7 produce these documents. We can mark them at this particular  
8 time and we can at least have them as part of this  
9 proceeding.

10 What do you think of that idea, Ms. Ryan?

11 MS. RYAN: Yes, we --

12 THE COURT: If we have them, but they should at  
13 least be able to present them to the Court.

14 MR. HOCHBAUM: The problem, Judge, is that they're  
15 in Spanish.

16 THE COURT: Well, I can only -- I can't do more  
17 than that.

18 MR. HOCHBAUM: Well, it seems to me that --

19 THE COURT: Do you want to have them submitted, Mr.  
20 Hochbaum, to the Court and have them marked at this time so  
21 that they can be officially part of this proceeding? Yes or  
22 no.

23 MS. RYAN: Your Honor, I think it's more  
24 appropriate for these kind of materials to be attached to a  
25 2255 motion by these defendants. This is the day of

1 sentencing and this is the first time this material's come  
2 forward.

3 THE COURT: We can have them identified now.

4 That's okay, if you want to do that --

5 MS. RYAN: And we have no guarantees as to any of  
6 its authenticity either.

7 THE COURT: Of course not. I just want to know  
8 whether -- since they're being referred to, the Court's, you  
9 know, preference is to have, you know, everything that's  
10 referred to before the Court. I'm not saying what  
11 significance to be attached to it, but since it's been  
12 referred to, like the best evidence rule, you know.

13 You want to have them marked now?

14 MR. HOCHBAUM: No, Judge, what I want is a  
15 government --

16 THE COURT: All right, I'm giving you the choice --

17 MR. HOCHBAUM: Judge, may I just --

18 THE COURT: Yes.

19 Would you like to have them marked, Mr. Obregon?

20 MR. HOCHBAUM: No, Judge, what I want --

21 THE COURT: Just one second. I'm conducting the  
22 proceeding. I'm just asking each of you if you like to have  
23 them marked so we have them officially as part of these  
24 proceedings.

25 MR. MUSA-OBREGON: Your Honor, may I confer with

1 co-counsel?

2 THE COURT: Mr. Kulcsar, would you like to have  
3 them marked?

4 MR. KULCSAR: Well, I've been trying to address the  
5 Court with respect to a different aspect that I think the  
6 Court has to consider. I think they --

7 THE COURT: Just answer my question whether you  
8 would like to have them marked?

9 MR. KULCSAR: I think they should be made available  
10 to the Court or to an official court interpreter, so that the  
11 Court can determine exactly the significance because leaving  
12 aside the issue of withdrawing the plea --

13 THE COURT: Stop.

14 Do you have these papers in court today?

15 MR. MUSA-OBREGON: Yes, I do, Your Honor.

16 THE COURT: Produce them to the court's clerk and  
17 they'll be marked.

18 MR. MUSA-OBREGON: I'm handing over to the court's  
19 clerk documents received from Investigator Acosta this  
20 morning; book 1, part 1 in a burgundy binder and book 1, part  
21 2. They apparently have been -- sections have been  
22 highlighted, the stick-ons, with respect to relevant  
23 testimony in this case.

24 THE COURT: Good. So they're marked now and we  
25 have these documents identified. Okay, so the clerk of the

1 court will mark this as a court exhibit at this time.

2 (Court Exhibit A marked for identification.)

3 MR. HOCHBAUM: Judge, it is our request, however,  
4 that in light of production of this material and the nature  
5 of it, that being in Spanish, that the Court consider a joint  
6 request by counsel to adjourn the sentence --

7 THE COURT: All right.

8 MR. HOCHBAUM: -- to allow us to provide  
9 interpreted copies --

10 THE COURT: All right. I understand your request.

11 MR. HOCHBAUM: -- to the Court --

12 THE COURT: You made them request on behalf of your  
13 client. It's denied. We're going to go forward with this  
14 sentencing.

15 Let me just dispose of the motion for the  
16 withdrawal of the plea that's before me. That's denied as  
17 well.

18 Just to go back to this last minute, you know,  
19 Spanish, you know, document or set of papers, the reason for  
20 the denial of any application for adjournment is that it's at  
21 the eve of trial, the plea allocution was taken back on April  
22 5th, 2005, over a year ago, the record is replete with the  
23 Court's indulgence for a number of adjournments at the behest  
24 of defense counsel and the time has come now for sentencing.  
25 These last minute types of things just are counterintuitive

1 in terms of going forward.

2 But be that as it may, in the face of the clear  
3 pleas of guilty rendered by each defendant, even if they have  
4 statements in Mexico from some of these victims, it doesn't  
5 really countermand the fact that they each stood before Judge  
6 Block and pleaded guilty to all these crimes, and that's what  
7 really dominates.

8 And you can make comments about this in respect to  
9 sentencing. I'll listen to you. If you want to make  
10 whatever comments you want as a result of these documents,  
11 fine. The Court has marked this as an exhibit and we'll  
12 proceed.

13 Now, as far as the withdrawal of the plea, of  
14 course the Court was very concerned about whether counsel was  
15 acceptable to the defendants and in particular in respect to  
16 Mr. Lashley, there was a long history about that.

17 And, you know, right at the outset of the  
18 proceedings back on April 5th, 2005, when the pleas were  
19 taken, I painstakingly explored whether there's any problem  
20 that any of the defendants had with their counsel and in  
21 particular with Mr. Lashley. And I called specific attention  
22 to Mr. Lashley's situation.

23 There were applications that were filed in the  
24 Court of Appeals to seek withdrawal of counsel and  
25 substitution of counsel. We carefully made sure that each of

1 the defendants were satisfied with their legal  
2 representation. It was agreed to withdraw their application  
3 to the Court of Appeals because they were happy with legal  
4 representation.

5 I'm not going to read to you chapter, book and  
6 verse, but I've gone over the minutes and I can't think of  
7 how I could have done it more poignantly or more effectively  
8 than what I did when we explored whether or not there was any  
9 problems with counsel.

10 Now, having said that preliminarily in terms of the  
11 withdrawal of the guilty plea, I just call your attention to  
12 some specific parts of the transcript and I'll read them  
13 verbatim. On page 47, I expressly told all the defendants:

14 "I want you to understand that when you give  
15 me that guilty plea you cannot count on withdrawing  
16 your guilty plea once you give it to me. You will  
17 be giving me your guilty plea with the  
18 understanding that it will stick. That you will  
19 not later on be able to withdraw your plea. It is  
20 very important that you understand that."

21 And I asked each one in turn whether there was any  
22 problem with that and they each said no. Then I said they  
23 each recognize that they understand that.

24 Then I went on to say:

25 "Now if I sentence you contrary to the law --

1           in other words, if I do something that I should not  
2           be doing, namely giving an incorrect or unlawful  
3           sentence, certainly you would have the right to  
4           appeal because I should not sentence you, nor do I  
5           intend to contrary to the law.

6           But even in that case, while you would have  
7           the right to have an unlawful sentence corrected by  
8           appealing to a higher authority, still you would  
9           not be able to withdraw your guilty plea once you  
10          give it to me. Only to make sure you have a legal  
11          sentence rendered."

12          Then I asked each defendant in turn whether there  
13          was any problem with that, whether everybody understood that  
14          and they all said yes. And then we went on with the rest of  
15          the proceedings.

16          At the end of the part of the proceedings where I  
17          advised everybody of their rights, I asked whether or not  
18          they understood about all their rights and that they  
19          understood that nobody has made any promises to you. I asked  
20          specifically whether anyone threatened or forced the  
21          defendant to plead guilty or made any promise to induce the  
22          defendant to plea guilty. We covered that very carefully.

23          And there's one other part which I want to refer to  
24          also. Yes. After I had finished advising them of their  
25          rights and the fact that we have the *Pimentel* letter and

1       there were estimates made, I told them again "It is important  
2       for you to understand again" -- this is at page 64 of the  
3       transcript -- "that whatever sentence I render, you will not  
4       be able to withdraw your guilty plea once you give it to me."  
5       So this is the third time you see I'm counseling the  
6       defendant's about that.

7               The reason why I am taking the time to go through  
8       this is because I think it's important for me to make a  
9       proper record in the face of their application to withdraw  
10      their guilty plea. And yes, I think it's important that we  
11      all recall these events.

12             Then I went on to say:

13                "It is important for you to understand that  
14      the government has put forward their estimate. The  
15      estimate of what the sentencing could turn out to  
16      be, but I'm not bound by that. I may agree or  
17      disagree. I will make my own independent  
18      assessment. It may well be that the sentence may  
19      exceed the government's estimate or it may well be  
20      it is less than the government's estimate."

21             I said also:

22                "I cannot tell you at this particular time,  
23      but it is important for you to understand that that  
24      estimate is not chiseled in stone. That I, the  
25      Judge, am responsible for making your sentence and



1           it is me and only me who will determine what your  
2           sentence will be."

3           Then I said:

4                 "Does anybody have any problems with that or  
5           any questions at this particular time?"

6           And I said after that:

7                 "It is very very important that each of you  
8           understand that. This is a good time to ask me  
9           questions about that or anything else I said before  
10          we proceed to the taking of your plea. So take a  
11          moment. If you wish to talk to your lawyers, you  
12          can do so at this time. If I don't hear anything  
13          from you, I will at that time work under the  
14          assumption you understood each and everything that  
15          I said to you, that you have no questions to ask  
16          and you are perfectly satisfied with the Court's  
17          representation of these proceedings." I think it  
18          should be the Court's presentation, I guess. "Take  
19          a moment to think about all of that and I will give  
20          you that opportunity".

21          Then there was a pause and I said:

22                 "Does anyone wish to speak to their lawyer  
23          again? All right. Do I hear any questions at  
24          all?"

25          And Mr. Del Valle said:

1 "No question, Your Honor. We are ready to  
2 proceed."

3 Now, I just want to add also that at the onset of  
4 the proceedings, I inquired of the defendants as to why is it  
5 that at the eleventh hour when the jurors were here ready to  
6 be voir dired that they were having a change of heart at the  
7 eleventh hour. And I said that it may well be that you will  
8 do no worse if you plead to the entire indictment than you  
9 would if you did go forward to trial. And I was concerned  
10 about that. And the lawyers assured me that this was what  
11 their clients preferred.

12 They spoke about the fact that they would arguably  
13 be entitled possibly to acceptance of responsibility and that  
14 they felt that by pleading, they would be in a better  
15 position come sentencing rather than to run the risk of  
16 apparently facing certain conviction on all of these charges  
17 or most of these charges as evidenced by their guilty pleas  
18 and the strong evidence apparently that the government had at  
19 its disposal.

20 So they made a reasoned decision to take these  
21 pleas after I inquired about all of that.

22 And so I think having said all of that, Mr.  
23 Kulcsar, do you have a hard time hearing me? I have the  
24 microphone on. You seem to be bending forward.

25 MR. KULCSAR: I appreciate that.

1 THE COURT: Do you wish me to speak a little  
2 louder?

3 MR. KULCSAR: Thank you.

4 THE COURT: I'll try --

5 MR. KULCSAR: That would be great. Thank you.

6 THE COURT: -- because you have some --

7 MR. KULCSAR: I know, Your Honor.

8 THE COURT: -- hearing problems --

9 MR. KULCSAR: Thanks, Your Honor.

10 THE COURT: -- and I have a low voice.

11 MR. KULCSAR: I know that, Your Honor.

12 THE COURT: So the combination of some hearing loss  
13 and a low voice by the Judge is not a good tandem.

14 MR. KULCSAR: Thank you.

15 THE COURT: All right? I'll try to speak louder.

16 So all of what I just said sets the stage for  
17 telling you and explaining to you why these motions now at  
18 the eleventh hour to withdraw the guilty plea are denied.

19 And, you know, separate apart from the fact that I so  
20 painstakingly alerted all of the defendants the fact that I  
21 will not allow them to withdraw the guilty plea, the -- and  
22 they knew about that, to make the application on the eve of  
23 sentence, you know, adds further fuel to the fire and further  
24 warrants the Court denying the motions.

25 So the record is clear about that, so all motions

1 are denied.

2 If there are any other motions out there, I don't  
3 know of any, but they should be deemed denied as well.

4 Are there anything -- anything else out there, Mr.  
5 Kulcsar?

6 MR. KULCSAR: Your Honor --

7 THE COURT: Any other motion?

8 MR. KULCSAR: -- I think --

9 THE COURT: Any other motions?

10 MR. KULCSAR: Yes, I'm addressing Your Honor's --

11 THE COURT: Ask me --

12 MR. KULCSAR: -- review of the transcript.

13 THE COURT: I'm giving you an opportunity to tell  
14 me whether there are any other motions. You don't have to  
15 debate with me about my review of the record. It's not what  
16 I'm asking you to do. Are there any other motions by your  
17 client? Yes or no.

18 MR. KULCSAR: You determined that whatever the  
19 application was for an adjournment.

20 THE COURT: Pardon?

21 MR. KULCSAR: That you --

22 THE COURT: That's been denied.

23 MR. KULCSAR: That's foreclosed.

24 THE COURT: Mr. Obregon?

25 MR. KULCSAR: I was just going to add one aspect to

1 the transcript. Since I wasn't here, I did read it. And I  
2 thought in might be pertinent, but if Your Honor has already  
3 determined that issue, then I'll move on to --

4 THE COURT: I just want to know if there's any  
5 other motions.

6 MR. KULCSAR: Well, I think there's another  
7 application with respect to the sentencing issue.

8 THE COURT: We're not at sentencing. I'm just  
9 dealing with motions here before we proceed to sentencing.

10 MR. KULCSAR: Well, the other aspect to the motion  
11 for postponement relates to this: Your Honor at the time of  
12 taking the plea, also asked the defense counsel whether they  
13 were aware of any valid defenses that existed at the time of  
14 taking the plea and I believe counsel in good faith answered  
15 no.

16 I also note in speaking to Mr. Del Valle in  
17 reviewing some of the discovery, there was a type of *Brady*  
18 letter sent out by the government that made reference to  
19 Mexico and in point of fact, definitively stated that the  
20 only evidence of an exculpatory -- and I use that word  
21 broadly -- nature was apparently a --

22 THE COURT: Do you have any other motions? You can  
23 talk all you want to. I'm not going to allow you to do that  
24 of course, but I'm asking you very specifically so we have a  
25 nice clean record for higher authorities to review.

1 Do you or do you not have any other motions before  
2 we proceed to sentencing --

3 MR. KULCSAR: No.

4 THE COURT: -- at this time? All right.

5 Mr. Obregon, how about you?

6 MR. MUSA-OBREGON: No, Your Honor.

7 THE COURT: And Mr. Hochbaum?

8 MR. HOCHBAUM: No, Judge. I have a request,  
9 however, that we might do this from the table. I can sit  
10 with my client.

11 THE COURT: You have a hard time standing?

12 MR. HOCHBAUM: I don't --

13 THE COURT: You can pull up a chair. You can sit  
14 if you like. Any problems?

15 MR. HOCHBAUM: No, just in terms of the length of  
16 the anticipated procedure here, Judge, just thought it might  
17 be better if all counsel were able to work from the table.

18 THE COURT: I like to have you close by here  
19 because we have to record you by these microphones. But if  
20 you need to sit because you're, you know, feeling like Barry  
21 Bonds these days, by all means I'll accommodate that.

22 Anybody else wish to sit in front of me? All  
23 right.

24 MR. HOCHBAUM: Okay.

25 THE COURT: Feel free to do so if at any time you

1       need that type of comfort.

2               Now, having cleared these motions and having denied  
3       your request for adjournments, is there any other reason why  
4       we should not proceed to sentencing at this time?

5               MR. KULCSAR: No, Your Honor.

6               THE COURT: Mr. Kulcsar, none?

7               None? None? Okay.

8               MR. HOCHBAUM: No, Your Honor.

9               THE COURT: We understand all your rights are being  
10       protected and --

11              MR. KULCSAR: Your Honor, I --

12              THE COURT: -- carefully done. So now we'll  
13       proceed first with --

14              MR. HOCHBAUM: However, Judge, I would like the  
15       opportunity, I mean since I'm not standing by my client, to  
16       find out if there's some other issue he wants me to address,  
17       which is why I wanted to do this from the table, but --

18              THE COURT: Well, you know, we -- you want to have  
19       an opportunity to consult with your client now? I'll give  
20       you a brief opportunity, each of you, before we proceed.

21              MR. HOCHBAUM: Thank you, Judge.

22              THE COURT: I'm going to work under the assumption  
23       that we're ready to proceed with sentencing, but if you want  
24       a brief moment to talk to your client, go ahead.

25              (Pause/counsel conferring.)

1 MR. KULCSAR: The question is whether we're ready  
2 to proceed with sentencing. I would request we not proceed  
3 with sentencing because --

4 THE COURT: You made that request.

5 MR. KULCSAR: And the reason simply stated is this:  
6 Whatever value that material has or doesn't have with respect  
7 to a motion to withdraw a plea or anything else --

8 THE COURT: Right.

9 MR. KULCSAR: -- it does have certain significance  
10 with respect to the calculations that are in the PSR. For  
11 example --

12 THE COURT: You can address those issues during the  
13 course of the sentencing.

14 MR. KULCSAR: Well, I can't because I'm not fully  
15 cognizant of what's in the transcript and I --

16 THE COURT: It's not my fault.

17 MR. MUSA-OBREGON: It's not defense counsel's fault  
18 either, Judge.

19 THE COURT: You just can't come here, you know,  
20 when we're ready to start sentence and present me with a  
21 whole document of Spanish material and ask for an  
22 adjournment. Look we've discussed it. It's denied. The  
23 circuit court's not going to change it. You're making your  
24 record. Let's go forward.

25 MR. KULCSAR: I do have three photographs that I



1 would ask to be marked --

2 THE COURT: Well, why don't you wait until we go  
3 forward with sentencing --

4 MR. KULCSAR: Okay.

5 THE COURT: -- and then you'll have an opportunity  
6 to do that. Are you court assigned, Mr. Kulcsar?

7 MR. MUSA-OBREGON: No, he's --

8 THE COURT: Court appointed or are you paying  
9 counsel?

10 MR. MUSA-OBREGON: -- he's private, Your Honor.

11 THE COURT: You're private. Yes, because, you  
12 know, court assigned counsel usually knows the procedure and  
13 sometimes private counsel is not as knowledgeable about how  
14 the Court proceeds to handles sentences. So you listen  
15 carefully, okay? You'll be educated.

16 MR. MUSA-OBREGON: Your Honor, to the extent that  
17 Mr. Kulcsar's motion was made and denied by the Court, I will  
18 join in the application --

19 THE COURT: Everybody joins in everything. We  
20 understand that. We're here to painstakingly protect your  
21 rights. This is one of my job responsibilities.

22 (Recess 12:22 p.m. to 12:23 p.m.)

23 THE COURT: Let's return now and proceed with  
24 sentencing.

25 (Pause/counsel conferring.)

1 THE COURT: Mr. Hochbaum, I think you've had ample  
2 opportunity. Let's go forward.

3 (Pause/counsel conferring.)

4 THE COURT: Mr. Hochbaum, come on up here. I'm  
5 telling you to come up here now. Come on, right now. We're  
6 not going to stay here all day. Under the circumstances,  
7 it's not indicated. Let's go.

8 THE CLERK: Counsel.

9 THE COURT: Mr. Hochbaum, I'm ordering you to come  
10 up here.

11 MR. HOCHBAUM: I'm in the midst of a conversation,  
12 Judge.

13 THE COURT: I'm ordering you to come up here.

14 (Pause.)

15 MR. HOCHBAUM: I apologize, Judge. It would have  
16 been easier without, you know, but I tried to get this --

17 THE COURT: Mr. Hochbaum, I'm trying to protect  
18 your client's rights here, but we can't stay here all day.  
19 There's a long history here. You've had ample opportunity to  
20 have many discussions with your client since you took over  
21 for Mr. Lashley. If you want to say one thing further on the  
22 record now, you can do so. Let's go forward with the  
23 sentence.

24 MR. HOCHBAUM: I would like to say one thing on the  
25 record, Judge. The discussion I was having with my client

1 was not a discussion that was possible at an earlier time.  
2 It related to the Court's determination of the motions and  
3 the requests for adjournment, so --

4 THE COURT: I denied that.

5 MR. HOCHBAUM: I understand that, Judge, so I  
6 needed to talk with him about what position he wanted me to  
7 take --

8 THE COURT: Okay.

9 MR. HOCHBAUM: -- during the sentencing process in  
10 light of those decisions rendered by the Court in the last --

11 THE COURT: Good.

12 MR. HOCHBAUM: -- 10 minutes, so --

13 THE COURT: You've had an opportunity, in my  
14 opinion, to have a chance to talk to him about it. Under the  
15 circumstances, we're ready to proceed.

16 All right, now let's take --

17 MR. HOCHBAUM: Judge, most respectfully, I would  
18 accept --

19 THE COURT: You can accept.

20 MR. HOCHBAUM: -- that determination and let the  
21 record reflect I need an additional five minutes with my  
22 client. If the Court doesn't want to give that to me, that's  
23 fine

24 THE COURT: Well, we'll take a break before we get  
25 to your client because it's 12:30 and I want to get through

1 with one of these sentences first. And so, at the break,  
2 you'll be able to further talk with your client.

3 MR. HOCHBAUM: Very good.

4 THE COURT: How's that? Okay?

5 Now let's take Gerardo Flores Carreto.

6 Mr. Musa-Obregon --

7 MR. MUSA-OBREGON: Yes, Your Honor.

8 THE COURT: -- you're retained counsel?

9 MR. MUSA-OBREGON: Yes, I am.

10 THE COURT: But you're very familiar with how to  
11 proceed with federal sentencing, aren't you?

12 MR. MUSA-OBREGON: Yes.

13 THE COURT: All right, so I'm going to take you  
14 first since Mr. Kulcsar is not as familiar and he can perhaps  
15 benefit by the process that's about to unfold, so when his  
16 turn comes, you know, he can really be up to speed. Okay?

17 MR. MUSA-OBREGON: Well, Your Honor, I believe Mr.  
18 Kulcsar is more familiar with this than I am.

19 THE COURT: Really? Well, we'll go forward with  
20 Gerardo Flores Carreto first. Okay?

21 Now, what we'll do is we'll identify for the record  
22 what I have in the sentencing file. That's the first thing.

23 And let me first ask you, Mr. Musa-Obregon, even  
24 though you're not as familiar with these matters as Mr.  
25 Kulcsar, whether you nonetheless realize that you should go

1 over the presentence report carefully with your client before  
2 sentence?

3 MR. MUSA-OBREGON: Yes, Judge.

4 THE COURT: And I assume as a good lawyer, you've  
5 done that?

6 MR. MUSA-OBREGON: Yes.

7 THE COURT: So tell the Court since your client is  
8 a Spanish speaking gentleman, how you communicated this  
9 lengthy presentence report that's in English to him.

10 MR. MUSA-OBREGON: Your Honor, I speak Spanish. I  
11 went over it with him during the last proceeding. And he's  
12 highlighted certain portions of it for me that he contests.  
13 I believe he has a complete understanding of the sentencing  
14 PSR report as conveyed to him by me.

15 THE COURT: There's no question in your mind and  
16 since you're a Spanish speaking gentleman, you're perfectly  
17 satisfied that you've communicated every relevant aspect of  
18 the presentence report to your client?

19 MR. MUSA-OBREGON: Yes, I am.

20 THE COURT: All right, and you're satisfied that he  
21 understood what you were telling him?

22 MR. MUSA-OBREGON: Yes.

23 THE COURT: There's no question in your mind that  
24 we can proceed in that regard, is there?

25 MR. MUSA-OBREGON: No.

1 THE COURT: All right. Very good. So the  
2 presentence report is dated January 27th, 2005. Now, in  
3 addition, we have the recommendation of the Probation  
4 Department and it's the Court's policy to make these  
5 sentencing recommendations available to counsel. Has that  
6 been done here?

7 MR. MUSA-OBREGON: Yes. Yes, it has.

8 THE COURT: Have you folks had ample opportunity to  
9 review the recommendation of the Probation Department?

10 MR. MUSA-OBREGON: Yes, I have.

11 THE COURT: All right. And I'm going to take a  
12 moment to read it into the record, even though it is part of  
13 the sentencing proceeding. Given the nature and the  
14 importance of this particular proceeding and the public  
15 interest in it, I think it's probably a good idea for me just  
16 to take a moment to read what the Probation Department says.

17 First of all, the Probation Department recommends  
18 on counts 2 through 6, 35 years of incarceration --

19 MR. MUSA-OBREGON: Your Honor, may I know what page  
20 you're reading from?

21 THE COURT: I'm reading the presentence  
22 recommendation from the Probation Department.

23 To run concurrent. I won't mention the five years  
24 -- the release provisions. And on counts 1 and 7 through 27,  
25 five years to run concurrent. So, in effect, Probation

1 recommends 35 years of incarceration. Okay?

2 And here is the comment that goes along with it:

3 "The defendant is a lifelong resident of  
4 Mexico with limited ties to this country. He only  
5 came to the United States several months prior to  
6 his arrest and it appears that he only did so to  
7 further this conspiracy. He has two children who  
8 are the product of two prior relationships. One of  
9 the mothers of the children was a victim of the  
10 instant offense."

11 I'm not telling you to comment, you know, just want  
12 to explain what they're saying. You'll have ample  
13 opportunity to comment when I give you the opportunity to  
14 speak in the course of sentencing.

15 Continuing with the recommendation:

16 "The instant offense represents the  
17 defendant's first arrest and conviction. In this  
18 case, the defendant and his cohorts forced numerous  
19 women into prostitution. These women were held  
20 against their will through threats of death and/or  
21 violence against them or their families, raped by  
22 the defendants, beaten, not allowed contact with  
23 their family members and forced to commit acts of  
24 prostitution.

25 "The defendants targeted young, poor,

1 uneducated women from impoverished areas of Mexico  
2 and kept all of the women's earnings from the  
3 prostitution. The defendant's role in this offense  
4 was that of a leader. He recruited women,  
5 collected the money they earned, organized all  
6 aspects of the offense, used fraud, force and  
7 coercion to control the victims and gave orders to  
8 the women and other defendants in this offense.

9 "The victims in this case have suffered  
10 immensely. The defendants controlled every aspect  
11 of their lives. The women were searched for money  
12 as they were not allowed to keep any of that which  
13 they earned. Some were required to service more  
14 than 20 customers a day, then beaten when they did  
15 not earn enough money and repeatedly threatened  
16 with death.

17 "In addition to the rapes, one victim was  
18 forced to have an abortion when she became pregnant  
19 as a result of a rape by one of the defendants.

20 "The crimes against these women are horrific  
21 and inhumane. Further, the advisory guideline  
22 range, although high, does not take into  
23 consideration all of the victims in this case. The  
24 nature and seriousness of the offense, coupled with  
25 the aggravating factors of the number of victims



1 not considered in the advisory guidelines, as well  
2 as the history and characteristics of the defendant  
3 and the need for punishment and deterrence, call  
4 for a sentence of 35 years custody."

5 All right. Now, I'm not saying I agree with all of  
6 that or any particular part. I'm just reading it for  
7 informational purposes as part of the information that is in  
8 my sentencing file.

9 In addition, I have, in no necessary order, a  
10 letter dated April 24th, collectively from Daniel Alonso, the  
11 defendants Alonso and Josue Flores and Gerardo Flores, and  
12 that asks for all the type of requests that we've already  
13 processed here in this proceeding. They want to withdraw  
14 their plea, they're talking about not being happy with their  
15 lawyers and other factual matters that they take some issue  
16 with. I'm just identifying that letter at this time.

17 I have Mr. Musa-Obregon's letter of April 21, 2006,  
18 submitting a number of objections to the presentence  
19 investigative report. And I have reviewed that.

20 And, you know, it talks about the fact that there's  
21 reference in the PSR at paragraph 59 to over 50 women being  
22 coerced into prostitution. You can speak about that at the  
23 proper time. It talks about the government's estimate of  
24 over hundreds of thousands of dollars and objects to the  
25 introduction of victim impact statements.

1           And then I have the underlying sentencing sheet,  
2           so-called *Pimentel* letter, and of course the transcript of  
3           the proceedings of April 5th, 2005, which I will deem to be  
4           included in this particular sentence, as well as in respect  
5           to the sentences with the other two defendants as well.

6           Is there anything else I should have? There is a  
7           letter from the government.

8           MS. RYAN:: Yes, Your Honor.

9           THE COURT: And that's one letter that, if memory  
10          serves me correctly, is dated April 26th, 2006.

11          MS. RYAN: That's correct.

12          THE COURT: All right, and that is a letter that  
13          the government submitted in respect to each of the  
14          defendants, so that letter will be deemed to be incorporated  
15          in each of the sentences.

16          MS. RYAN: Thank you.

17          THE COURT: And it addresses the concerns of each  
18          defendant. Okay.

19          Anything else I should have before we make our  
20          advisory guidelines calculation, Mr. Musa-Obregon?

21          MR. MUSA-OBREGON: No, Your Honor.

22          THE COURT: Okay. So let's try to do that. Now,  
23          of course, they are extensive, but I think we can probably  
24          find a realistic way of dealing with them without having a  
25          three-day proceeding. Let's see whether we can do that.

1           And then I'll give you an opportunity to speak in  
2           support of the letter that you submitted to me and we can  
3           talk about that. But for purposes of making the guideline  
4           calculations, we want to turn to page 32. And --

5           MR. MUSA-OBREGON: Your Honor, I'm going to correct  
6           myself with the Court's permission. I'm going to ask that  
7           the transcripts that have been marked be also something that  
8           be considered by the Court.

9           THE COURT: Which transcripts? You mean the  
10          Spanish documents?

11          MR. MUSA-OBREGON: Yes.

12          THE COURT: Well, that Court Exhibit A and, you  
13          know, certainly you can speak to them in the course of  
14          sentencing. I'll give you the opportunity to do that, but  
15          I'm not going to delay the proceedings because of that. I've  
16          spoken about that.

17          I'm not going to give them the opportunity to  
18          withdraw their guilty plea because of that. We're clear  
19          about that. But I will give you the opportunity to refer to  
20          that. Since you're Spanish speaking, you probably, you know,  
21          a little bit what's contained in that set of papers, okay?

22          All right, so now let's use count 1 as a jumping  
23          off point. Because much of this is going to be repeated  
24          throughout all the counts. And we have here a base offense  
25          level in respect to count 1 of 27. Now, count 1 deals with

1 act A and counts 2 and counts 11 collectively deal with  
2 conspiracy to engage in sex trafficking, sex trafficking with  
3 Jane Doe 1 and transportation for purposes of prostitution.

4 Now we know that when we go through the  
5 calculations they are basically the same with just a few  
6 variations and the reason why they're so extensive is because  
7 we have eight victims.

8 So, we have to go through each of these in respect  
9 to each one because each victim is separate and apart and  
10 they're not all grouped together. Of course there is  
11 appropriate grouping within the confines of these  
12 calculations, but we have to deal with each victim  
13 separately.

14 So, here we have base offense level of 27. And in  
15 respect to Jane Doe Number 1, there's a four level  
16 enhancement for the use of physical force and threats of  
17 serious bodily injury. And then there's a two level  
18 enhancement because the victim was a vulnerable victim. And  
19 there's a four level enhancement because the defendant is  
20 deemed to be an organizer. And that results in an adjusted  
21 offense level of 37.

22 Now, there are may 37's, but since the issue of  
23 vulnerable victim repeats throughout, of physical force and  
24 organizer, if you wish to speak about any of these  
25 adjustments at this time, I'll give you the opportunity to do

1 so and then maybe we can cut to the chase when it comes to  
2 the others, okay?

3 MR. MUSA-OBREGON: Yes, Judge. Understanding that  
4 Mr. Carreto's plea to the indictment included elements of him  
5 pleading guilty to using force in the course of promoting --

6 THE COURT: Yes.

7 MR. MUSA-OBREGON: -- prostitution and the  
8 allocution even included elements of -- related to the victim  
9 related adjustment as to these women being from poor rural  
10 areas and he also acknowledged that he was a leader or a  
11 manager --

12 THE COURT: No, not a manager, you know, he's the  
13 leader. He's an organizer.

14 MR. MUSA-OBREGON: I'm sorry, an organizer.

15 THE COURT: That's four levels. The leader is  
16 three levels.

17 MR. MUSA-OBREGON: Right. Notwithstanding that --

18 THE COURT: He did allocute --

19 MR. MUSA-OBREGON: -- those acknowledgments --

20 THE COURT: -- to all of this.

21 MR. MUSA-OBREGON: -- on behalf -- yes.

22 THE COURT: Right.

23 MR. MUSA-OBREGON: Notwithstanding those  
24 acknowledgments as to all of those factors, there are  
25 elements of this case that I'd like the Court to consider.

1 THE COURT: Certainly, I'll give you the  
2 opportunity, but I just want to make our advisory guideline  
3 calculations first. And I do agree with you, of course, that  
4 he has allocuted to this very carefully and very specifically  
5 and there's no reason for me not to accept that the adjusted  
6 offense level of 37 in respect to count 1 is correct. And I  
7 don't hear any real serious disagreement from you.

8 MR. MUSA-OBREGON: Your Honor, with the -- I have  
9 made an objection to the victim related adjustment and that  
10 is that I don't believe that this broad categorization of  
11 young, poor and uneducated women from rural areas of Mexico  
12 is sufficient to meet the type of standard that would require  
13 -- that would be subject -- I mean that would mean any crime  
14 against half the population of Mexico would be subject to an  
15 upward enhancement.

16 THE COURT: Well, I think that these particular  
17 victims are in a unique position. Ms. Ryan may wish to  
18 elaborate on that at this time.

19 MS. RYAN: Well, Your Honor, I -- we attempted to  
20 address Mr. Obregon's objection in our letter. On pages 5  
21 and 6 of our letter, specifically.

22 THE COURT: You say that they're wealthy, they  
23 lived in good homes, they had cars, but I don't have any of  
24 that in the presentence report. That's just your letter.

25 MS. RYAN: That may not be entirely correct, Judge.

1 We certainly indicated that in our trial brief before the  
2 Court and be that as it may, the defendants were rich and  
3 powerful because they were operating this criminal  
4 organization for some time.

5 THE COURT: The nature of the fact that they are  
6 organizers and controlling this whole operation certainly  
7 shows that they were not in the same situation as the  
8 victims. I mean I think it's kind of silly to even, you  
9 know, go further in that respect.

10 And, you know, based upon their allocutions, if I  
11 recall correctly the total circumstances of this particular  
12 prosecution, there's no question that they represent the --  
13 these poor women, the very textbook example of vulnerable  
14 victims, and it is certainly sufficient throughout the  
15 proceedings here without me having to go back and cite  
16 chapter, book and verse for me to feel totally comfortable  
17 that we're dealing with prototypical vulnerable victims.

18 Okay, you made your record. So the adjusted  
19 offense level is 37.

20 Now having said that, now we then proceed to also  
21 agree, without having to be unnecessarily repetitious, that  
22 the adjusted offense level for count 1, act B et cetera is  
23 also 37? And --

24 MR. MUSA-OBREGON: Well, Your Honor, with my  
25 same -- noting my same objection --

1 THE COURT: Yes, we --

2 MR. MUSA-OBREGON: Yes.

3 THE COURT: -- understand that. All of these  
4 aspects are still the same. They deal with vulnerable  
5 victims. They deal with physical force. They deal with  
6 being an organizer. So there's nothing different.

7 So we can proceed then, I'm sure you agree, Mr.  
8 Musa-Obregon, to also agree that in respect to count 1, act  
9 C, we're dealing with 37?

10 MR. MUSA-OBREGON: Correct, Judge.

11 THE COURT: And in respect to count 1, act D, et  
12 al, we're dealing with again 37.

13 MR. MUSA-OBREGON: Yes.

14 THE COURT: Now, we now come to the next set, so to  
15 speak, of criminal activity. And that deals with count 1,  
16 act E. That's the conspiracy to engage in sex trafficking of  
17 Jane Doe.

18 MS. RYAN: It's Jane Doe No. 5, Your Honor.

19 THE COURT: Jane Doe No. 5. That one has a  
20 different element to it. That's why I call attention to it.  
21 Because in paragraph 121, she had not obtained the age of 16,  
22 so that requires an additional two levels.

23 And that's established as a matter of fact in this  
24 case that she had not obtained the age of 16?

25 MS. RYAN: Yes, Your Honor. She was 14 when she



1 was first --

2 THE COURT: What evidence do I have of that?

3 MS. RYAN: I believe that that's indicated in the  
4 presentence report.

5 THE COURT: It is in the presentence report.

6 Do you take any exception to her age?

7 MR. MUSA-OBREGON: Your Honor, I discussed it with  
8 my client and he does not believe that she was 14.

9 THE COURT: Do we have a way of establishing that  
10 factually?

11 If we don't have anything that establishes it  
12 factually, then I'm going to just treat this as 37 also. My  
13 guess it's not going to make any difference, but I do see  
14 that the defendant has rights and if the defendant says that  
15 he doesn't believe she's 14, I need something to satisfy the  
16 Court that she was.

17 MS. RYAN: I understand the Court and I agree with  
18 what you've just stated, Your Honor. I would just note for  
19 the record that the Court gave these defendants ample  
20 opportunity to make these kinds of factual objections before  
21 we actually were here today. The government -- if you could  
22 just give me one moment, Your Honor?

23 THE COURT: Is there anything in the allocution  
24 that he said that she was 16?

25 MR. MUSA-OBREGON: I don't recall that, Judge. I

1 don't think that was a part of the allocution.

2 THE COURT: Yes, I don't think so either.

3 MS. RYAN: Your Honor, I think the allocution  
4 indicated that the victims were under the age of 18, which is  
5 also a factor to be considered here, but that was a general  
6 allocution to the victims generally.

7 THE COURT: Yes, but we have 16 which is a very  
8 specific age.

9 MS. RYAN: Yes.

10 We're happy to agree to the level 37, Your Honor.

11 THE COURT: Yes, I think it may well may be that it  
12 will not make a difference, but we want to be circumspect.  
13 So then in paragraph 125, in respect to count 1, act E, we'll  
14 change that 37 also.

15 Now we go on to count 1, act F and that deals with  
16 Jane Doe Number 6. That should be 37. It's the same as all  
17 these others. So we have another 37.

18 And yet an additional 37 when it comes to count 1,  
19 act G. That's Jane Doe Number 7.

20 And then the same with Jane Doe Number 8 --

21 MR. MUSA-OBREGON: Your Honor, we have an  
22 objection.

23 THE COURT: Just one second. Let me just -- Jane  
24 Doe Number 8 is a little different in one respect because  
25 there's two levels added to the fact that she was allegedly

1       choked and hit in the face that she became permanently  
2       scarred.

3               Yes, Mr. Obregon.

4               MR. MUSA-OBREGON: Your Honor, we neglected to  
5       mention that one of the things that was given to us by the  
6       private investigator this morning for the first time is a  
7       picture of Jane Doe Number 8.

8               And this picture was taken by the investigator  
9       who's present in the courtroom a month ago. And according to  
10      the picture, she has no permanent scar on her face. There's  
11      actually multiple pictures that were given to us.

12              THE COURT: All right.

13              MR. MUSA-OBREGON: And --

14              MS. RYAN: Your Honor, I just like state for the  
15      record that I've met Jane Doe Number 8 and I don't believe  
16      this is actually her. We may have a problem here, but this  
17      doesn't --

18              THE COURT: All right, so here's my --

19              MS. RYAN: -- look like the woman I remember.

20              THE COURT: -- here's my policy here. We could  
21      really get to the nitty gritty of this. There are all sorts  
22      of ways of doing it. I don't want to debate who has the  
23      burden of this or the burden of that.

24              I'm not going to -- since there's a question here,  
25      I won't add two levels, so you have another 37. Okay. So we

1 are giving the defendant every benefit of all doubts here. I  
2 think considering the fact that they face maybe get life in  
3 prison and that -- it's not a bad policy for the Court to  
4 adopt under these circumstances.

5 Now let's move to count 1, act 1 and count 6. Now  
6 we're now segueing into the conspiracy to engage in sex  
7 trafficking and attempted sex trafficking for Jane Doe Number  
8 9. So that adds the attempted sex trafficking. That's what  
9 make her situation different perhaps than the others. And we  
10 haven't adjusted level 31.

11 Do you take any exception to that Mr. --

12 MR. MUSA-OBREGON: No, Your Honor.

13 THE COURT: -- Musa-Obregon.

14 Now we're dealing with the transportation for  
15 purposes of proposition. We have to go through all of those.  
16 So we start with Jane Doe Number 1. That's in count 7. And  
17 in paragraph 515, we have a base offense level of 27.

18 I take it you have no exception to that, Mr. Musa-  
19 Obregon, that it is --

20 MR. MUSA-OBREGON: No, Your Honor.

21 THE COURT: -- correct.

22 And we have these four levels for the use of  
23 physical force that's been established. Then we have the  
24 specific offense characteristic number 2841b4b. Those  
25 numbers give the court reporters fits, don't they?

1 And that involves specifically what, Ms. Ryan?

2 MS. RYAN: I just opened my book, Your Honor, to  
3 make sure I have it correct. It says, "If any" -- this is  
4 284.1b4. "If any other felony offense was committed during  
5 the commission of or in connection with the peonage or  
6 involuntary servitude offense, increase to the greater of"  
7 and then sub b says --

8 THE COURT: So that's because there was this other  
9 criminal activity --

10 MS. RYAN: That's correct.

11 THE COURT: -- on top of that. So I think that's  
12 correct.

13 MS. RYAN: Yes, Judge. We agree.

14 THE COURT: All right, so two levels are added  
15 because that as a matter of law applies here. Then we have  
16 once again the vulnerable victims. I've ruled on that  
17 already.

18 MR. MUSA-OBREGON: Your Honor?

19 THE COURT: Yes.

20 MR. MUSA-OBREGON: If I may, with respect to the  
21 allegation of a separate criminal act committed by Mr.  
22 Gerardo Flores, he is not in agreement with that. That was  
23 not part of the allocution.

24 MS. RYAN: It certainly was, Your Honor. The other  
25 felony here is the sex trafficking.

1 THE COURT: He allocuted to the other crimes.

2 MR. MUSA-OBREGON: All right.

3 THE COURT: It's not a standalone crime here, you  
4 see.

5 MR. MUSA-OBREGON: Oh, I'm sorry, I thought the  
6 allocution was related to an attempted sexual assault of some  
7 sort.

8 MS. RYAN: No, Your Honor, this -- count 7 that's  
9 being discussed right now --

10 THE COURT: Right.

11 MS. RYAN: -- is the --

12 THE COURT: Transportation for purposes of  
13 prostitution of Jane Doe Number 1.

14 MS. RYAN: Correct.

15 THE COURT: And it calls for two level enhancement  
16 if in the course of that there was also another crime  
17 committed, right?

18 MS. RYAN: Yes, and there were several felonies  
19 committed in connection with this, alien smuggling and sex  
20 trafficking.

21 THE COURT: Right. Exactly.

22 MR. MUSA-OBREGON: Okay. I'm going to withdraw the  
23 objection, Judge.

24 THE COURT: Okay, so that's 39. And then count 8  
25 we're now going to go through the other Jane Does. We have

1 another 39. These are all 39's for the same reasons that we  
2 just discussed in respect to count 7, so we need not take  
3 time -- further time to re-articulate all of this. Count 10,  
4 the same thing; transportation for purpose of prostitution of  
5 Jane Doe Number 4, so that's 39.

6 Now we come to count 15, paragraph 179. That's the  
7 conspiracy to commit eight substantive offenses, which are  
8 violations of 18 U.S.C. 1328. And we're talking about the  
9 importing aliens for illegal purposes and importation of Jane  
10 Doe 1 for immoral purposes. That's a different set of  
11 criminal activity. And then the base offense level is 27.  
12 Physical force is still applicable. That's four more levels.  
13 We're dealing with vulnerable victims. That's two levels.  
14 And once again, organizer of the criminal activity requires  
15 four levels. So the adjusted offense level for that crime is  
16 37.

17 And that should be the same in respect to all of  
18 the other count 15 situations. Act B, for example, carries  
19 37 for the same reason. Act C carries 37 also for the same  
20 reasons. Same thing with act D. Same thing with act E,  
21 except here we have 39.

22 And once again, it's going to be reduced to 37  
23 because we're not going to hold the defendant accountable for  
24 the fact that the victim had not allegedly turned the age of  
25 16. So that's 37.

1           Now, we're talking about count 15, act F and that  
2           will be again 37. And then count 15, act G will be 37.  
3           Count 15, act H is going to be 37. We're not dealing with  
4           the question of choking and scarring. We made a  
5           determination about that before.

6           And the next grouping here we're talking about  
7           deals with the alien smuggling and alien smuggling for  
8           financial gain. And here on paragraph 230, we have a base  
9           offense level of 12.

10          And unless I hear some exceptions since I don't see  
11          where there's any basis for it, but nonetheless, you can  
12          speak, if you wish, Mr. Musa-Obregon. I come to a 21  
13          adjusted offense level. Do you agree with that?

14          MR. MUSA-OBREGON: Yes, Judge.

15          THE COURT: Now we have the multiple count  
16          adjustment and we don't have any 39's anymore or are there  
17          any that are left?

18          MS. RYAN: I think they're all 37's now, Judge.

19          THE COURT: All 37's. I don't think it changes the  
20          multiple count adjustment, so on page 50, paragraph 241,  
21          we'll change that to 37 instead of 39. We'll do the same in  
22          respect to paragraph 244. And I think that's all we need to  
23          do.

24          But I still think it gets the same one count and I  
25          still think we come out with eight and a half total number of



1 units and we have a five unit cap on that. So, whichever way  
2 you slice it, we have to add five.

3 So, let's take the greater of the adjusted offense  
4 levels, which is 37, add the five increase, gives us a  
5 combined adjusted offense level of 42. And he gets  
6 acceptance of responsibility two levels.

7 MS. RYAN: Well, Your Honor, given the recent  
8 submissions, the government would actually like to be heard  
9 on that.

10 THE COURT: Doesn't sound as if they're accepting  
11 responsibility.

12 MS. RYAN: Exactly, they're trying to withdraw  
13 their pleas the day of sentence, Your Honor. I think that's  
14 a textbook rejection of responsibility and the government  
15 would object to those two levels being reduced to this  
16 calculation.

17 THE COURT: That makes --

18 MR. MUSA-OBREGON: Your Honor, there's --

19 THE COURT: That makes good sense to me. I mean  
20 the Court painstakingly went over all their rights. They  
21 have a last minute desire to withdraw their plea. They're  
22 going to complain that they weren't given effective counsel.  
23 They're going to make as much as they can over the Spanish  
24 documents submitted to the Court at the eleventh hour.

25 Doesn't sound like acceptance of responsibility,

1 Mr. Musa-Obregon.

2 MR. MUSA-OBREGON: Your Honor, if I can speak on  
3 behalf of my defendant and also to some extent some of this  
4 can be transcended to the others, they've always wanted to  
5 accept responsibility with respect to portions of the charges  
6 in this case, Judge.

7 They will -- my client will freely acknowledge  
8 responsibility for being involved in prostitution related  
9 activities. He would have --

10 THE COURT: I don't understand that. You're saying  
11 that they accept responsibility for the serious prostitution  
12 charges. Is there any of these charges that they pled guilty  
13 that they do not accept responsibility for?

14 MR. MUSA-OBREGON: Well, Your Honor, I'm not saying  
15 that. I'm saying to the extent that the Court is taking the  
16 -- my client's latest ill-advised submission to withdraw the  
17 guilty plea as a --

18 THE COURT: What do you mean by ill-advised?

19 MR. MUSA-OBREGON: Well, I -- Your Honor, it was  
20 not something that I prepared for him.

21 THE COURT: Right. So you can't control your  
22 client. Did you counsel your client about this matter --

23 MR. MUSA-OBREGON: It came as a total surprise to  
24 me, Judge.

25 THE COURT: Oh.

1 MR. MUSA-OBREGON: And I had no awareness that  
2 was --

3 THE COURT: The last minute surprise --

4 MR. MUSA-OBREGON: And it arrived two days ago. I  
5 think it was filed with the Court two days ago.

6 THE COURT: All right.

7 MR. MUSA-OBREGON: There are issues in this case  
8 that transcend the idea of complete acceptance or complete  
9 rejection.

10 This was a global plea, Judge, that was offered by  
11 the government on the eve of trial and Mr. Carreto would have  
12 no problem today, based on my conversations with him,  
13 accepting responsibility for portions of it with the  
14 extent -- to the extent that he now has information that some  
15 of the witnesses that had been -- some of the witnesses that  
16 had previously, according to the government, held one  
17 position are now holding another and that he pled guilty to  
18 those witnesses. That -- I think that's part of the issue  
19 that -- but with -- he's generally accepted --

20 THE COURT: I don't understand. The --

21 MR. MUSA-OBREGON: -- responsibility --

22 THE COURT: -- application -- I know that you're  
23 not responsible for it and you can't be responsible for  
24 everything your client does or does not do. But the  
25 application was to withdraw his guilty plea in respect to all

1 of the charges, not some of the charges. I just went  
2 through, you know, nine Jane Does here. You're talking about  
3 perhaps three of these people. And, you know, your client  
4 wants to withdraw his guilty plea completely.

5 Do you think that's acceptance of responsibility?  
6 I do not. So the -- he will not get any acceptance of  
7 responsibility and the total offense level is 22. You have  
8 your record and the Court is clear about the reason why the  
9 Court is --

10 MS. RYAN: I'm sorry, Judge, I believe --

11 THE COURT: -- not going to do that.

12 MS. RYAN: -- the offense level's a 42. I think  
13 the Court --

14 THE COURT: Did I say forty --

15 MS. RYAN: -- misspoke. You said 22, but it's 42.

16 THE COURT: I meant 42.

17 MS. RYAN: Thank you.

18 THE COURT: Okay.

19 And that with a criminal history category of one  
20 would call for a sentence of 360 months to life imprisonment.  
21 We know we have certain statutory maximums on these various  
22 charges, but counts 2 through 6 carry the 360 to life  
23 potential and the probation department recommended 35 years.  
24 Counts 1 and 7 through 27 have a five year cap which will run  
25 concurrent. So we understand.

1                   Now it's 1:00. Do you wish at this time to speak  
2                   on behalf of your client before the Court imposes sentence?  
3                   I will say this: That I know there's some argument about  
4                   whether 50 women were, you know, victimized, so to speak.  
5                   The government says that there is that type of evidence. I  
6                   don't see anything tangible about it. We know that a lot of  
7                   victims were implicated here, but I'm not necessarily going  
8                   to proceed on the assumption that there was 50 or 40 or 30.  
9                   So you not -- need not be concerned about that. And what  
10                  else do you wish me to take into consideration?

11                 MR. MUSA-OBREGON: Well, Judge, in light of the  
12                 fact that it is 1:00, I've been standing here for about --  
13                 all of us for about an hour and a half, may we continue when  
14                 we come back?

15                 THE COURT: We can take a lunch break now. Would  
16                 that be more comfortable for you?

17                 MR. MUSA-OBREGON: Yes.

18                 THE COURT: Do you wish to have the victims speak  
19                 now or later?

20                 MS. RYAN: I can -- if the Court would -- I mean  
21                 I'm --

22                 THE COURT: It's up to them. If it's --

23                 MS. RYAN: Right.

24                 THE COURT: -- more convenient for them now, so  
25                 they don't have to stay, but it's up to them.

1 MS. RYAN: If you could just give us a moment to  
2 check with them, Your Honor.

3 THE COURT: Go ahead.

4 (Pause.)

5 MR. HOCHBAUM: Judge, in any respect, regardless of  
6 whether the Court wants to continue at this point in time, my  
7 client had made a request that he be allowed to go to the  
8 bathroom.

9 THE COURT: The marshals are in charge of that.  
10 We're going to be leaving very quickly. He can hold out,  
11 hopefully. And you'll have ample opportunity during our  
12 lunch break to talk to him. Okay.

13 MR. HOCHBAUM: I understand that --

14 THE COURT: Can the marshals allow him to use the  
15 facilities in the meantime while we're waiting, okay?

16 MR. HOCHBAUM: Thank you.

17 THE INTERPRETER: There's two, Your Honor. The  
18 other defendant also needs to go.

19 THE COURT: Well, let's -- look, since everybody  
20 has to use the facilities, we'll take out lunch break. The  
21 Court will be back --

22 MS. RYAN: That's fine.

23 THE COURT: -- 2:00.

24 MS. RYAN: Thank you, Your Honor.

25 MALE VOICE: 2:00?

1 THE COURT: 2:00.

2 (Lunch recess 1:01 p.m. to 2:18 p.m.)

3 THE COURT: Ready to continue?

4 MR. MUSA-OBREGON: Yes, Your Honor.

5 MS. RYAN: We're ready, Judge.

6 THE COURT: You're not going to have these victims  
7 speak?

8 MS. RYAN: They're coming down the hall --

9 THE COURT: They are coming.

10 MS. RYAN: -- as we speak.

11 THE COURT: All right, because I don't see them  
12 here I just wonder, since you were speaking to them, whether  
13 you want to report to the Court now as to whether they wish  
14 to be heard which is their right and because we're getting  
15 close to the point where they will be given that opportunity.

16 MS. RYAN: My understanding is that some of them do  
17 wish to be heard, Your Honor.

18 THE COURT: And I think probably the way to do it  
19 would be just before I call upon the defendant to ask whether  
20 he wishes to be heard, so that he'll have the benefit of  
21 hearing everything that has preceded. That sounds about  
22 right to me.

23 MS. RYAN: I had a slightly different idea, Judge,  
24 but I can certainly see the --

25 THE COURT: Tell me. It's all right.

1 MS. RYAN: -- validity of the position --

2 THE COURT: I mean I have some flexibility here.

3 MS. RYAN: Obviously, the government's concern is  
4 with the victims and that it's sort of the reverse concern  
5 that the defendant might say something that they would feel  
6 that they might like to respond to for the Court to consider.

7 THE COURT: Well, you know, I guess the question is  
8 whether the defendant should have the last word before  
9 sentence is imposed. My thinking is that probably is the way  
10 it should be. Because after all, the defendant is the one  
11 that faces incarceration, not the victims.

12 MS. RYAN: I understand, Your Honor.

13 THE COURT: All right. At this time, we made our  
14 calculations and Mr. Musa-Obregon, I turn the courtroom over  
15 to you if you wish to speak in behalf of where within the  
16 range 360 to life your client should be sentenced.

17 MR. MUSA-OBREGON: Your Honor, most respectfully, I  
18 would ask the Court --

19 THE COURT: Let me take it back. That's the  
20 advisory range. You can also request that I sentence him to  
21 less than the advisory range.

22 MR. MUSA-OBREGON: Your Honor, most respectfully, I  
23 do request the Court use the guidelines perhaps as in an  
24 advisory fashion, but not feel that it's bound by the  
25 guidelines as is your power. Mr. Carreto -- Gerardo Carreto



1 stands before you today as a man in his earlier years of life  
2 having not had a lot of experience as an adult before many of  
3 these things happened. Mr. Carreto has no criminal record as  
4 he appears before you. He has --

5 THE COURT: He has not been in this country for  
6 long, if I recall.

7 MR. MUSA-OBREGON: That's correct, Your Honor.

8 THE COURT: I don't remember how many months has it  
9 been.

10 MR. MUSA-OBREGON: I think it was a question of --  
11 it was a short period of time, Judge. I don't believe the  
12 government's position is that he has a criminal record  
13 anywhere in the world --

14 THE COURT: No, no, no, I understand that, but  
15 he -- all I'm suggesting is that, you know, when you say he  
16 has a criminal history category one, to some extent, that may  
17 be the product of the fact that he has only been in this  
18 country a short time. All right, go ahead.

19 MR. MUSA-OBREGON: Well, Judge, I --

20 THE COURT: Your argument would take on greater  
21 significance if he had been here for let's say 20 years and  
22 was not involved with any criminal conduct than if he was  
23 here for matter of months or a few years.

24 MR. MUSA-OBREGON: I understand, Judge, but I don't  
25 think there's any evidence and I don't think the government,

1       certainly in its immense resources, would have been able to  
2       dig out any evidence of any other crimes that he would have  
3       been charged and convicted for in any other country. I don't  
4       think that's (indiscernible).

5               Mr. Carreto, Your Honor, is to some extent a  
6       product of his environment. There is -- and I don't know if  
7       the government will ever concede this, but in the town where  
8       he is from, prostitution is something that occurs very  
9       frequently. Many households, many families are involved in  
10      prostitution, based on the information that I have, and --

11             THE COURT: Yes, but, you know, I don't know  
12      whether if that be the case, it entailed what happened here.  
13      For example, maybe Mr. Innelli, the Court's outstanding  
14      clerk, could remind the name of the co-defendant who I  
15      sentenced who was the madame of the brothel in Coney Island.

16             THE CLERK: Edith Mosquera.

17             THE COURT: Mosquera.

18             THE CLERK: Yes.

19             THE COURT: Excellent.

20             But I recall her testify that the women weren't  
21      given a penny. So they weren't even to earn a dishonest  
22      living, let alone an honest one. And that struck me as  
23      something that's -- you know, I recall as we go through this  
24      dialogue.

25             MR. MUSA-OBREGON: Well, Your Honor, I'm glad that

1 the Court has mentioned this point. Mr. Carreto's position,  
2 as well as I believe other people involved in this case, is  
3 that although some of the profits were taken by him, it would  
4 not be improper to say that the women were not being given a  
5 penny, Judge. There's evidence that some of the women  
6 financed real estate back in their home country as a result  
7 of the prostitution --

8 THE COURT: Well, I'm just saying that at this  
9 prior sentencing -- and I can consider everything that  
10 relates to the sentence -- a co-defendant did say that, you  
11 know, they never got any money. They were picked up and, you  
12 know, that'll -- we can incorporate all of that in the  
13 sentencing proceeding. But she said that they were picked  
14 up. They weren't allowed to even go home on their own. They  
15 were taken back and forth to the place where they were kept  
16 basically slavery and that --

17 MR. MUSA-OBREGON: Your Honor, I --

18 THE COURT: -- no -- I just want to point out to  
19 you so you can comment, if you wish, that there is that type  
20 of testimony under oath before me.

21 MR. MUSA-OBREGON: I understand that, Your Honor.  
22 Perhaps the other type of testimony that should be under oath  
23 before you is the following: Some of these women, Judge, did  
24 enjoy the opportunity of traveling on their own, meeting with  
25 their friends, et cetera, et cetera. It is inconceivable,

1 Your Honor, that the government's impression is that these  
2 women were held under lock and key. My discussions with the  
3 former chief of the general crimes of the U.S. Attorney's  
4 Office is not that it was that type of scenario, but it was,  
5 according to the government's theory, a type of psychological  
6 coercion, as opposed to --

7 THE COURT: Well, but you know they pled guilty to  
8 having, you know, visited physical force upon these people.  
9 I mean that's what they said in their allocution. You know,  
10 this is a lot -- look, you have a hard job. There's no  
11 question. I'm not disrespecting you.

12 But I have to be frank my whole way which I handle  
13 sentences is to really enter into an interaction with counsel  
14 so that the sentence doesn't come as a surprise. You have  
15 the collective sense of where I'm thinking where I'm going as  
16 we discuss things.

17 MR. MUSA-OBREGON: Yes. Your Honor, I know Your  
18 Honor is privy to a lot of information, some of which I'm not  
19 privy to. But I think it would be naive of --

20 THE COURT: No, no, I'm not privy to any  
21 information that you're not privy to.

22 MS. RYAN: That's right.

23 MR. MUSA-OBREGON: I think it would be naive for  
24 the Court to believe that it would -- that these women were  
25 held under lock and key and that they were not free to ever

1 leave or anything like that, or that the -- that these women  
2 -- there are elements of voluntariness, as well as  
3 involuntariness to some of these activities, Judge.

4 The women were subcontracted by the defendant that  
5 you just mentioned, Edith Mosquera, to work in other homes  
6 where the defendants were not involved in. Those are things  
7 that perhaps the government should have made aware -- should  
8 have brought to your attention or did not. The women were  
9 taken to other homes out of the purview of the defendant and  
10 out of the purview of Ms. Mosquera even.

11 There were money transfers sent back and home --  
12 back and forth from the women to their very own families. I  
13 think the government would be very hard pressed today to  
14 stand here and tell you that these women were totally out of  
15 control of their -- of all financial profits that were being  
16 made --

17 THE COURT: The money went back, you know, to the  
18 Carreto family, not to the victims' families. There's  
19 nothing that I have that tells me or informs the Court that  
20 these monies went to the victims' family to help these poor  
21 people out.

22 MR. MUSA-OBREGON: Well, Your Honor, certainly,  
23 portions and probably large portions went to the Carreto  
24 family, but not all of the money went to the Carreto family.

25 THE COURT: Well, you don't know that, do you, as a

1 matter --

2 MR. MUSA-OBREGON: Your Honor, this is the  
3 information that I received --

4 THE COURT: -- of your own factual knowledge?

5 MR. MUSA-OBREGON: Well, we have an investigator  
6 here, Judge, who came from Mexico, who was there four weeks  
7 ago and he's given us this information. He's met with the  
8 families. He's met with various people. He's learned that  
9 real estate was purchased by some of the victims' families as  
10 a result of remittances --

11 THE COURT: All of that knowledge was within your  
12 client's awareness when your client pled guilty. He knew  
13 these women. He knew whether there were trials. I think  
14 there's some reference to some trials in Mexico. He was  
15 there. He had all the knowledge in the world. He didn't  
16 have to wait till the veritable twelfth hour to bring some of  
17 these facts out to muddy the record so that there's at least  
18 some colorable claim for appeal or 2255's.

19 MR. MUSA-OBREGON: So --

20 THE COURT: He can't say that this is newly  
21 discovered evidence. He was there. He was knowledgeable  
22 about all this.

23 MR. MUSA-OBREGON: Well, Your Honor, we knew that  
24 there were proceedings. However, when we asked the  
25 government do you have any records of proceedings, they

1 indicated that they did not and --

2 THE COURT: And your clients weren't involved in  
3 those proceedings? There's some reference that they were  
4 acquitted on some of these proceedings.

5 MR. MUSA-OBREGON: Well, Your Honor, from my  
6 understanding, they -- the proceedings that I know about my  
7 client -- he was here during the course of those proceedings.  
8 And I did not see a transcript, Judge. People can conjecture  
9 and talk about everything until this morning. That's why I  
10 did not want to waste anyone's time until --

11 THE COURT: I know you're --

12 MR. MUSA-OBREGON: -- I actually saw something.

13 THE COURT: I know you're in a hard spot here, but  
14 go ahead.

15 MR. MUSA-OBREGON: And, Your Honor, by no --

16 THE COURT: By the way, the investigator --

17 MR. MUSA-OBREGON: -- stretch of the --

18 THE COURT: Let me ask this just so the record's  
19 complete. The investigator that produced this Spanish  
20 document I assume is paid by your client and --

21 MR. MUSA-OBREGON: Yes.

22 THE COURT: -- the defendants, right? So I guess  
23 they had more money at their disposal and more wealth at  
24 their disposal than the victims. Because you were making the  
25 argument that they --

1 MR. MUSA-OBREGON: Oh, I have --

2 THE COURT: -- all came from poverty, but it seems  
3 like --

4 MR. MUSA-OBREGON: Well, Your --

5 THE COURT: -- right there -- let me finish --  
6 is --

7 MR. MUSA-OBREGON: Yes.

8 THE COURT: -- pretty good evidence, not that we  
9 need it necessarily in the context of everything else, that  
10 your clients were more privileged than these other people  
11 because they were able to afford counsel, they were able to  
12 afford an investigator.

13 So, I'm not saying that they don't have a right to  
14 do that, but it does suggest that they were not on the same  
15 economic level as the victims. Okay, go ahead.

16 MR. MUSA-OBREGON: Yes. Your Honor, by no stretch  
17 of the imagination am I trying to in any way excuse Mr.  
18 Carreto for the crimes that he's pled guilty to and for what  
19 he will be sentenced today.

20 I am merely making an argument of proportionality  
21 that there are elements to the government's case that are  
22 overblown. That is that there are elements that to the --  
23 certainly the number of people, certainly the number of --

24 THE COURT: I'm not -- I told you I'm not going  
25 to --



1 MR. MUSA-OBREGON: -- certainly the financial  
2 disparity --

3 THE COURT: I told you I'm not going to take the 50  
4 people into consideration. I don't have any hard evidence  
5 about that. I think there's ample evidence to support there  
6 is lots of money involved here without necessarily putting a  
7 particular dollar figure on it.

8 So, you know, you can rest assured that your  
9 arguments are well-intentioned and, you know, I'm taking them  
10 seriously. Go ahead.

11 MR. MUSA-OBREGON: Right. Your Honor, to the  
12 extent that the Court is considering financial issues about  
13 investigators that the investigator, Judge, has been paid  
14 \$3,000 for a two-week stay in --

15 THE COURT: I think I put it in proper context.

16 MR. MUSA-OBREGON: No, I understand. But I'm  
17 trying to say this was not -- he's essentially doing it pro  
18 bono from what I --

19 THE COURT: Right.

20 MR. MUSA-OBREGON: -- from what I'm hearing from  
21 him to the extent that he's going on a leap of faith and  
22 trying to vindicate these -- to the extent that he can,  
23 certain aspects --

24 THE COURT: But money was going back to the Carreto  
25 family. We know that. I mean we know that from a number of

1 sources --

2 MR. MUSA-OBREGON: Yes. Yes, Your Honor.

3 THE COURT: -- and you don't say otherwise.

4 MR. MUSA-OBREGON: There is certainly an element of  
5 domination and control, et cetera, et cetera, but it is not  
6 to say that they were living as virtual slaves, Judge, and  
7 that's the point I'm trying to make.

8 THE COURT: You made your point.

9 MR. MUSA-OBREGON: It may be more akin to the type  
10 of domination and control that exist in certain other types  
11 of scenarios, but it is not a slavery master type of  
12 relationship as the government would like to make it seem.

13 Mr. Carreto in all --

14 THE COURT: I didn't think the government made it  
15 seem that way at all. They pled guilty to 27 counts or the  
16 entire indictment. Who pleads guilty to an entire indictment  
17 if there's nothing very, very viable and compelling about the  
18 charges?

19 MR. MUSA-OBREGON: Well --

20 THE COURT: All right, go ahead.

21 MR. MUSA-OBREGON: Well, Your Honor, one of the  
22 reasons they pled guilty, Judge, is because they were led to  
23 believe by the government that the victims in this case had  
24 absolutely nothing favorable to say about them --

25 THE COURT: They could have gone to trial.

1 MR. MUSA-OBREGON: -- and that is directly  
2 contradicted by the --

3 THE COURT: They could have gone --

4 MR. MUSA-OBREGON: It is directly --

5 THE COURT: -- to trial. They could have cross-  
6 examined the witnesses. They had all these rights. All  
7 right, go ahead. What else?

8 MR. MUSA-OBREGON: As lawyers --

9 THE COURT: We were ready to go to trial.

10 MR. MUSA-OBREGON: Yes, as lawyers, Your Honor, we  
11 make it -- we make judgments based on the evidence that the  
12 other side shows us. We had no idea that these transcripts  
13 existed, which to a large extent, exonerates the defendants  
14 based on those particular witnesses, Judge.

15 THE COURT: Your argument's -- you keep coming back  
16 and that's all you're going to trot out before the Circuit  
17 Court of Appeals, but it's silly. Go ahead. What else?

18 MR. MUSA-OBREGON: Mr. Carreto, Judge, as a  
19 relatively young man, is keenly aware of --

20 THE COURT: How old is he? Thirty?

21 MR. MUSA-OBREGON: I'm trying to remember, Judge.

22 MS. RYAN: He's 34.

23 MR. MUSA-OBREGON: I think he just turned --

24 THE COURT: Thirty-four.

25 MR. MUSA-OBREGON: -- 34.

1           -- is keenly aware of the decisions that he's made  
2           in his life --

3           THE COURT: Are you suggesting because prostitution  
4           may be rampant in Mexico that the United States of America  
5           should condone it --

6           MR. MUSA-OBREGON: No, no.

7           THE COURT: -- when it happens here?

8           MR. MUSA-OBREGON: No, of course not, Judge. What  
9           I'm trying to --

10          THE COURT: Or should we send a message out that we  
11          will do the opposite?

12          MR. MUSA-OBREGON: No, no, of course not. I don't  
13          think this should be a message case at all, Judge. I  
14          think --

15          THE COURT: You don't think so?

16          MR. MUSA-OBREGON: Your Honor, I think --

17          THE COURT: You don't think it's necessary to  
18          perhaps send a message to others who may want to come to the  
19          United States because they think prostitution is A-okay and  
20          everything else that happened here is okay?

21          MR. MUSA-OBREGON: Your Honor, I think Mr.  
22          Carreto --

23          THE COURT: You don't think they should be dealt  
24          harshly and a message should be sent that this is not going  
25          to be accepted in this country? Especially since you tell me

1 it's okay in Mexico.

2 MR. MUSA-OBREGON: Judge, I'm not saying it's okay.  
3 I'm saying it's something that happens in that particular  
4 town.

5 THE COURT: Maybe it won't happen in this country  
6 if the proper message is given. Go ahead.

7 MR. MUSA-OBREGON: Your Honor, I think Mr.  
8 Carreto --

9 THE COURT: We are not Mexico. I love Mexico.  
10 Don't get me wrong, but we have different laws and different  
11 concepts of justice, perhaps.

12 MR. MUSA-OBREGON: Your Honor, I think in this  
13 particular case, Mr. Carreto should be judged and sentenced  
14 according to his own actions. And I don't think this should  
15 be a test case or anything of the sort where I know the  
16 government spent millions of dollars on this particular  
17 case --

18 MS. RYAN: Your --

19 THE COURT: I'm going to sentence somebody because  
20 they pled guilty to 27 terrible counts of criminal behavior.  
21 That's why I'm going to sentence him. And it's going to be  
22 based upon the facts that I have and the law that I'm going  
23 to apply. That's all I'm going to do. Nothing else.

24 Anything else you have to say?

25 MR. MUSA-OBREGON: Mr. Carreto, Judge, as he stands

1 before you, is at a crossroads in his life. He's 34 years  
2 old.

3 THE COURT: He is at a crossroads.

4 MR. MUSA-OBREGON: And in this particular  
5 situation, Judge, I would ask you to consider sentencing him  
6 to 12 years. I think that would be a number that would  
7 certainly send out all the signals that the Court would  
8 like to --

9 THE COURT: All right. Well, you're doing a good  
10 job as his lawyer. We do candidly have different numbers in  
11 mind. Anything else you wanted to say?

12 MR. MUSA-OBREGON: Yes, Judge. The specific  
13 instances of violence that are directly attributed to him,  
14 Your Honor, are not particularly egregious or very -- in  
15 light of the entirety of this accusation, Judge, which is  
16 such a big case, the actual specific acts of violence that  
17 are attributed to him are not high in numbers, Judge.  
18 They're a few instances in the course of several years.

19 I ask the Court to take into account the totality  
20 of the circumstances in this case and sentence him to  
21 something outside of the range as I had indicated, Judge.

22 THE COURT: All right. I can only sentence him  
23 some -- outside the range if I depart from the lower and I  
24 can't sentence him outside in the higher end because the  
25 higher end is life. So we understand each other.

1                   Now, Ms. Ryan, at this time, what do you wish to  
2                   do?

3                   MS. RYAN: Your Honor, if I could just respond to a  
4                   few things that defense counsel just stated and then perhaps  
5                   bring up --

6                   THE COURT: Go ahead.

7                   MS. RYAN: -- some of the victims to speak.

8                   In no particular order. In response to Mr.  
9                   Obregon's assertion that the government had only said that  
10                  the victims in this case had only had one position and now  
11                  there may be this mysterious second position that's more  
12                  favorable to their clients, I'll simply state that as is  
13                  customary in this district prior to trial, the victims who  
14                  were going to be trial witnesses we provided *Giglio* materials  
15                  in a letter to the defense in accordance with our obligations  
16                  and there were indications in those letters that at  
17                  particular points in time, there were statements made by  
18                  these victims that could arguably used -- be used for cross-  
19                  examination --

20                  THE COURT: Now I haven't seen that. And no, it  
21                  isn't necessary for me to have seen that, unless it was  
22                  called to my attention. But you are making a representation  
23                  now as an officer of the court, as well as persons upholding  
24                  the hard traditions of your office, that all *Giglio* material  
25                  was turned over and that includes statements by some of these

1 people that suggested that they were making up these stories?

2 MS. RYAN: No, Your Honor, that's not what I'm  
3 saying. What I'm saying is that we, in our *Giglio* letter,  
4 disclosed that one of the victims in this case had given a  
5 statement down in Mexico at some point to the best of our  
6 understanding, but it was at the request of the defendants.

7 THE COURT: Did you disclose what that statement  
8 was or you had no knowledge?

9 MS. RYAN: We disclosed our sum and -- the best  
10 understanding we had of the sum and substance of those  
11 statements. We did not physically have those statements  
12 because they were in control of the Mexican government.

13 THE COURT: Do you have an idea what the sum and  
14 substance were what you disclosed to the defendants in your  
15 *Giglio* disclosure?

16 (Pause.)

17 THE COURT: Make sure you have it accurate because  
18 you're making a representation --

19 MS. RYAN: Absolutely, Judge.

20 THE COURT: -- that you made these disclosures.

21 MS. RYAN: I think that our disclosure was somewhat  
22 general, Your Honor, and it's been a while since I looked at  
23 it, but I think it had something to do with --

24 THE COURT: Just be careful because, you know, if,  
25 in fact, there were disclosures that arguably could have some



1 relevancy on some issues here.

2 MS. RYAN: I just wanted to make the Court aware  
3 that we've complied with our *Giglio* obligations here.

4 THE COURT: You're backing away a little bit now.  
5 I mean I have to be fair --

6 MS. RYAN: I don't want to misspeak, Your Honor. I  
7 don't have the letter with me here today.

8 THE COURT: You ought not be to misspeak. Be very  
9 careful.

10 MS. RYAN: Thank you.

11 THE COURT: What else?

12 MS. RYAN: With respect to Mr. Obregon's comment  
13 that the violence perpetrated by Gerardo Flores Carreto  
14 really wasn't so bad, it wasn't so often, just by way of  
15 example, Your Honor, I'd like to point you to paragraphs 59  
16 of the presentence report on page 16 where referenced to him  
17 repeatedly raping one of the victims in this case after  
18 basically kidnapping her.

19 In paragraph 60, the final sentence of that  
20 paragraph is that he hit the victim repeatedly in the face  
21 with a cable, leaving her bloody and bruised.

22 THE COURT: That comes from I guess it's  
23 information obtained from the victims --

24 MS. RYAN: Yes.

25 THE COURT: -- I assume.

1 MS. RYAN: So, the government takes issue with his  
2 characterization of his client's level of violence in this  
3 case. To best of our knowledge, he was an extremely violent  
4 person who routinely beat his victims and threatened them  
5 with death.

6 With respect to his -- defense counsel's comments  
7 that -- about voluntariness generally in these kinds of  
8 cases, I just like to remind the Court about the -- what the  
9 Trafficking Victims Protection Act indicates which is that  
10 you don't need to have someone chained up in order to have  
11 total control of them. The congress has recognized the kind  
12 of control that human traffickers have over their victims and  
13 that was certainly at play here. That's just simply not  
14 necessary. They don't need to be locked up. These women  
15 were under the complete control of the defendants.

16 THE COURT: There's a congressional finding here.

17 MS. RYAN: Yes, Your Honor.

18 Also just the defendant's own words contradict some  
19 of defense counsel statements here. The defendant, as the  
20 Court has recognized repeatedly, pled guilty to the  
21 indictment in this case and he pled guilty to forcing his  
22 victims to commit prostitution. He also --

23 THE COURT: He allocuted to that.

24 MS. RYAN: I'm sorry?

25 THE COURT: He specifically allocuted to that --

1 MS. RYAN: He specifically -- on page 76 and page  
2 77 of the guilty plea transcript, he specifically allocated  
3 to forcing specific victims into prostitution.

4 THE COURT: Allocute, not --

5 MS. RYAN: Thank you very much, Judge. He also  
6 admitted to using force against these victims. And he  
7 specifically allocuted to the fact that he didn't allow these  
8 victims to keep any money they received from engaging in  
9 prostitution.

10 THE COURT: That's right. Now you remind me of  
11 that.

12 MS. RYAN: He specifically admitted that during his  
13 guilty plea.

14 THE COURT: Shall we hear from the victims at this  
15 point?

16 MS. RYAN: One moment, Judge.

17 (Pause.)

18 MS. RYAN: One thing I just would like to clarify,  
19 Judge, with respect to the monies that were sent from New  
20 York down to Mexico that were the proceeds of the forced  
21 prostitution activity. The lion share of that money did go  
22 to the Carreto family organization to co-conspirators.  
23 Sometimes the defendants themselves when they were still in  
24 Mexico. There were very small instances where victims were  
25 permitted by the defendants to send nominal amounts to their

1 own family members.

2 For example, they were allowed to send \$80 or \$100  
3 once or twice over the entire course of the offense conduct.  
4 Meanwhile, thousands of dollars were being sent each week by  
5 the defendants back to the criminal organization.

6 THE COURT: You have any specific knowledge of  
7 that, how much money was sent down there? I know that  
8 there's references to all of this in your letter, but --

9 MS. RYAN: We -- in preparation for trial, Your  
10 Honor, and as indicated in our letter that was filed  
11 yesterday, hundreds of pages of wire transfer records were  
12 provided in discovery to the defense and the government  
13 reviewed those obviously and we came up with some round  
14 numbers, but we're not confident that that's all the money  
15 that was sent.

16 THE COURT: Based upon the wiretaps and you turned  
17 them over to defendants --

18 MS. RYAN: Not wiretaps, Judge, wire -- money  
19 remitters.

20 THE COURT: Money wired.

21 MS. RYAN: Wire -- money wires.

22 THE COURT: Wired monies.

23 MS. RYAN: Yes.

24 THE COURT: What did that come out to that was  
25 actually turned over to the defendants --

1 MS. RYAN: It was --

2 THE COURT: -- roughly?

3 MS. RYAN: It was in excess of \$150,000 that had  
4 been sent during certain points in time. We had incomplete  
5 records and incomplete information.

6 THE COURT: At the very minimum, it was at least  
7 that that was --

8 MS. RYAN: Yes.

9 THE COURT: -- documented and --

10 MS. RYAN: Yes.

11 THE COURT: -- the defendants were apprised of  
12 that --

13 MS. RYAN: Yes.

14 THE COURT: -- by giving them notice and copies of  
15 the wire --

16 MS. RYAN: Yes.

17 THE COURT: -- transfers.

18 MS. RYAN: That's correct.

19 THE COURT: Anything else?

20 MS. RYAN: No, Judge, I think I'd like to see if  
21 any of the victims would like to speak --

22 THE COURT: Let's do that now.

23 MS. RYAN: Thank you.

24 (Pause.)

25 THE COURT: Yes, now who do we have here?

1 OLIVIA: Olivia. I am the victim of Gerardo  
2 Flores.

3 THE COURT: All right, now she doesn't have to be  
4 placed under oath, but I'll leave the choice to her if she  
5 wants to.

6 OLIVIA: I do.

7 THE COURT: All right, so at this time, the clerk  
8 of the court, who has just left --

9 Mike, do you want to place this person under oath,  
10 please?

11 THE CLERK: Yes, Your Honor.

12 THE COURT: That's what her preference is.

13 THE CLERK: First I'll ask the interpreter if you  
14 can raise your right hand.

15 (The interpreter is sworn.)

16 THE CLERK: Please state and spell your name for  
17 the record.

18 THE INTERPRETER: Libia Clancy, C-l-a-n-c-y.

19 THE CLERK: Thank you.

20 I ask the victim if you could raise your right  
21 hand?

22 (Olivia Gutierrez is sworn.)

23 THE COURT: All right, now bear in mind since  
24 you -- I gave you the choice of whether you wanted to talk to  
25 me under oath or not, so by choosing to speak under oath,

1       that means if you do not speak truthfully, you run the risk  
2       of being prosecuted for perjury or making a false statement  
3       under oath. I just want to counsel you about that.

4               MR. HOCHBAUM: Your Honor, I'll raise an issue. I  
5       have an objection to the use of this interpreter. It's an  
6       interpreter hired by the government. I would ask the Court  
7       to have an official court interpreter. This is a woman who  
8       was at every proffer session used by the government. She  
9       works specifically for the U.S. Attorney's Office. I can  
10      already tell by the emphasis which she placed the name of the  
11      defendant upon the record that she is not --

12             THE COURT: Not -- yes, go ahead.

13             MR. HOCHBAUM: -- a impartial --

14             THE COURT: Here's what we'll do.

15             Ms. Ryan, the interpreter has credentials that you  
16      know of?

17             MS. RYAN: Yes, Your Honor.

18             THE COURT: All right. State it on the record.

19             MS. RYAN: My understanding is that Ms. Clancy is a  
20      certified Spanish interpreter and that she in fact worked in  
21      this courthouse for many years.

22             THE COURT: Ms. Clancy, are you certified as a --

23             THE INTERPRETER: Yes, I am.

24             THE COURT: -- official interpreter?

25             THE INTERPRETER: Since 1980.

1 THE COURT: And how long have you been working in  
2 this courthouse as an interpreter?

3 THE INTERPRETER: Since 1966.

4 THE COURT: All right, that's on the record.

5 Now, we'll do something else, Mr. --

6 MR. HOCHBAUM: Judge, my problem was not the fact  
7 that Ms. Clancy is a certified Spanish interpreter. It is  
8 with the fact that she is retained and paid by the U.S.  
9 Attorney's Office, not by the court. She is not an  
10 independent contractor. She is an employee of the United  
11 States Attorney's Office.

12 THE COURT: That's doesn't mean she's not  
13 qualified --

14 MS. RYAN: Your Honor, she actually is an  
15 independent contractor. She is not an employee of the United  
16 States Attorney's Office. She is a contractor --

17 THE COURT: She's a contractor --

18 MS. RYAN: -- who does work for our office.

19 MR. HOCHBAUM: But she works for their office, not  
20 for the courts.

21 THE COURT: All right, Mr. Hochbaum, you made your  
22 record.

23 Now, Mr. Musa-Obregon, you're still here.

24 MR. MUSA-OBREGON: Yes, I am, Your Honor.

25 THE COURT: So you come forward and stand up here,



1 since you are fluent in Spanish. It's good to wear  
2 suspenders and a belt. As an officer of the court, you  
3 listen carefully to Ms. Clancy's interpretation. If there's  
4 anything that strikes you as odd or not evenhanded, you let  
5 me know as an officer of the court. Okay, thank you.

6 All right, now continue. Let me hear from --

7 Your name again is?

8 MS. GUTIERREZ: Olivia Gutierrez.

9 THE COURT: I'll call you Olivia. You're free to  
10 speak as a victim. You have the right to address the Court  
11 at this time if you choose to do so. Go ahead.

12 MS. GUTIERREZ: Okay. I understand the defense  
13 attorneys that is their job to defend them. But actually,  
14 they were never in my shoes. They never knew what I actually  
15 had to live through because it's not difficult because it's  
16 not the same to say something that you live in.

17 So, what I am asking you is to give this man,  
18 Gerardo Flores, the high conviction that they deserve because  
19 he in fact has hurt a lot. There are a lot of victims, not  
20 just myself. I am the person who started in prostitution  
21 prior to my 16th birthday. And I know him well. So, the  
22 only thing that I would also like to ask you is that my  
23 daughter be returned to me because he took her away. She is  
24 now eight years old and I don't even know her. And they  
25 still have her.

1 THE COURT: Do you know where your daughter is  
2 today?

3 MS. GUTIERREZ: No. I have an idea that she is  
4 with her family, but only because of the process that I'm  
5 undergoing in Mexico for the custody.

6 THE COURT: All right. So you -- thank you very  
7 much. Muchos gracias.

8 Anybody else wish --

9 You may sit down. Thank you.

10 (Pause.)

11 MS. RYAN: Yes, Your Honor, there's another victim.  
12 If I could just clarify or add something to what Olivia just  
13 stated, the government has been trying to make efforts to  
14 help with returning her daughter to her and have not  
15 succeeded yet. Just want to put that on the record.

16 THE COURT: Now who do we have here now?

17 MS. CRUZ: My name is Maria (indiscernible) Garcia  
18 Cruz.

19 THE COURT: All right, now I'll give you the same  
20 option that I gave to the prior person. You can speak to the  
21 Court. You don't have to be placed under oath. But if you  
22 wish to be placed under oath and swear to the truthfulness of  
23 your comments, I'll give you the opportunity to do that if  
24 that is your desire.

25 MS. CRUZ: I do.

1 THE COURT: All right, so the clerk of the court  
2 will administer an oath to you.

3 THE CLERK: I ask you'll raise your right hand?

4 (Maria Cruz is sworn.)

5 THE CLERK: Thank you.

6 THE COURT: Now, before you continue since you have  
7 taken an oath, be mindful now that if you do not speak the  
8 truth, that you could be prosecuted for perjury or rendering  
9 a false statement under oath. Bear that in mind and at this  
10 time, you're free to speak to me as you choose.

11 MARIA: Yes. Your Honor, I am here because I want  
12 these people to be punished with a very stern sentence for  
13 them. I was badly hurt. They abused me, seduced me, abused  
14 me and tried to woo me. He wooed me so much only so that I  
15 would go work for him.

16 Aside from that, he played with my feelings. He  
17 toyed with my life. And he stepped on me as though I were  
18 garbage. He did not have the slightest consideration towards  
19 me, towards my daughters.

20 And frankly, I know they don't have the slightest  
21 idea what the value of a human being is. They don't care  
22 about destroying people's lives because what they want is  
23 money. What they want is to dominate the world by having a  
24 lot of women to themselves. They feel like gods before a woman  
25 who has no defense because she's beaten and they totally

1 mistreat them or --

2 THE COURT: Anything else?

3 MS. CRUZ: That's all.

4 THE COURT: Thank you very much.

5 Anybody else, Ms. Ryan?

6 MS. RYAN: Let me check, Your Honor.

7 Yes, Your Honor.

8 (Pause.)

9 THE COURT: All right, and your name?

10 MS. PALMERA: Veronica Palmera.

11 THE COURT: All right, Miss Palmera, once again,  
12 you can talk to me without being placed under oath. That's  
13 perfectly acceptable. But if you choose, you can also take  
14 an oath which means you'll swear to the truth and I'll give  
15 you the option either way.

16 MS. PALMERA: I just want to talk without having to  
17 be under oath. I just want to tell you something.

18 THE COURT: Go ahead.

19 UNIDENTIFIED MALE: Your Honor, I ask that she --

20 MS. CRUZ: The harm that you have --

21 THE COURT: Excuse me, stop one second. What?

22 MS. CRUZ: -- caused is irreversible.

23 THE COURT: Just one second.

24 UNIDENTIFIED MALE: I'm sorry, Judge, I ask that  
25 she identify who she's talking --

1 THE COURT: Who are you speaking about?

2 MS. CRUZ: Gerardo Flores Carreto.

3 THE COURT: Go ahead.

4 MS. CRUZ: The harm you have caused is  
5 irreversible. It's not fair. As a woman, I cannot wish that  
6 upon anybody and as a man, you're not worth it. That's all.

7 THE COURT: Thank you very much.

8 Anybody else?

9 MS. RYAN: Your Honor, I think -- Your Honor, we're  
10 having a little bit of confusion here because some of the  
11 women were primarily victimized by one particular defendant  
12 as opposed to another, but if the Court is willing to listen  
13 to the victims generally now --

14 THE COURT: The ones who spoke so far I take it  
15 they were talking about the defendant, Gerardo Flores  
16 Carreto. We should clarify that if there is any -- if I'm  
17 under an improper --

18 MS. RYAN: No, you're --

19 THE COURT: -- understanding.

20 MS. RYAN: -- 100 percent correct.

21 THE COURT: All right. Now let's hear from this  
22 person.

23 Your name?

24 MS. ROMERO: Veronica Romero.

25 THE COURT: Romero, is it?

1 THE INTERPRETER: Romero.

2 THE COURT: Okay. Do you wish to testify -- do you  
3 wish to speak under oath or without taking an oath?

4 MS. ROMERO: No oath.

5 THE COURT: All right, you're not going to be  
6 talking to me under oath. You can say what you wish to say.

7 MS. ROMERO: What I'm going to say goes to Josue  
8 Flores.

9 THE COURT: Just one second. I'll listen to you,  
10 even though we're not talking about Gerardo. I understand  
11 what you're saying now doesn't deal with Gerardo, but deals  
12 with Josue. All right, go ahead.

13 MS. ROMERO: Yes. I hope that justice is properly  
14 applied. He hurt me a great deal. And it was not fair when  
15 my parents came to visit me at his house that they were  
16 beaten by Josue. His mother tried to beat up my parents who  
17 were just trying to come visit me. And when I realized that,  
18 it was too late to see my parents when they were being beaten  
19 up. And I hope that justice is done because of that. That's  
20 all that I ask you.

21 THE COURT: Thank you very much.

22 Now the folks who spoke before they were speaking  
23 only about Gerardo or they wish to be heard with respect to  
24 the other defendants as well? I just have to be clear about  
25 that.

1 MS. RYAN: I appreciate that, Your Honor. The  
2 first three women who spoke were speaking about Gerardo  
3 Flores Carreto. The woman who just spoke was speaking in  
4 reference to Josue Flores Carreto. And we have other victims  
5 here who may or may not choose to speak with respect to the  
6 other defendant, Daniel Perez Alonso. If we -- I'll leave it  
7 to the Court's discretion as to --

8 THE COURT: Well, it might be best if --

9 MS. RYAN: -- when that is appropriate.

10 THE COURT: -- we just had those people speak in  
11 respect to this particular defendant and to indicate whether  
12 they are commenting about more than just this defendant, so  
13 the record is clear what we are referring to. Anybody else  
14 now?

15 MS. RYAN: We'll check.

16 (Pause/Court and clerk confer.)

17 THE COURT: Yes, we have someone else?

18 MS. RYAN: Your Honor, I just checked with the  
19 victims. With respect to the defendants that have -- with  
20 respect to Gerardo Flores Carreto, no one else wishes to say  
21 anything at this moment. With respect to the other  
22 defendants generally, no one wishes to say anything else  
23 right now. I would ask the Court for the opportunity to  
24 check with them again after they've heard some of the  
25 additional statements that defense counsel may make to see if

1       they change their minds.

2               THE COURT: All right, I think that is clear enough  
3 now.

4               All right, at this time, the defendant, Gerardo  
5 Flores Carreto, is entitled to speak to the Court before  
6 sentence is imposed.

7               And, Mr. Musa-Obregon, would you have him step up  
8 here. If he wishes to speak to me, that is his right.

9               (Pause.)

10              DEFENDANT GERARDO CARRETO: Good afternoon. First  
11 of all, what I would like to say is the victims that spoke  
12 just now is their word against mine.

13              THE COURT: They're what?

14              THE INTERPRETER: It's their word against mine.

15              THE COURT: I understand.

16              DEFENDANT GERARDO CARRETO: From the very beginning  
17 I said that I was guilty of prostitution, not that I was a  
18 coyote (phonetic) or the other things that I'm being accused  
19 of.

20              THE COURT: You pled guilty to all those. You  
21 allocuted. You specifically told me that your crimes involve  
22 more than just simple prostitution. You talked about  
23 physical beatings. You talked about being an organizer. You  
24 talked about alien smuggling. You talked about sex  
25 trafficking. You said that through your own lips after I



1       questioned you extensively. You had the right to go forward  
2       with your trial and maybe your defenses that you think you  
3       had would have gone out, but you pled guilty to everything,  
4       not just prostitution.

5               DEFENDANT GERARDO CARRETO: I'm sorry for my  
6       ignorance. First of all, I don't know English. Second, my  
7       attorney knew that there is evidence and that I wanted to go  
8       to trial.

9               THE COURT: You refuse to accept responsibility.  
10      You're telling me you lied when you told me under oath that  
11      you were guilty. You told me you -- in effect you're telling  
12      me you lied when you explained the circumstances of your  
13      criminal activity in response to my questions when I asked  
14      you to tell me what you did to justify my accepting your plea  
15      of guilty. You are not accepting responsibility and you are  
16      lying to the Court now. What else do you have to say?

17              DEFENDANT GERARDO CARRETO: No, I'm sorry. It's  
18      just that it was confusion.

19              THE COURT: I tried my very best ability to make  
20      sure there was no confusion. I gave you time and again, you  
21      know, information about your rights. I protected your right  
22      to have counsel who would be competent and who would protect  
23      your interest. I did everything imaginable to make sure you  
24      understand every single thing that was happening. You had  
25      the ability to have counsel and interpreters as well explain

1 everything to you thoroughly. So the fact that you don't  
2 speak English doesn't really enter into the equation here,  
3 does it?

4 DEFENDANT GERARDO CARRETO: With all due respect to  
5 you, once I emphasized to have my attorney changed. You did  
6 not allow it.

7 THE COURT: I asked you specifically whether you  
8 were satisfied with Mr. Lashley's services and told you how  
9 important it was for me to make sure that you were  
10 comfortable with that. You told me under oath that you were.  
11 You told me that you were going to withdraw any complaints  
12 against Mr. Lashley. I told you --

13 MR. HOCHBAUM: Your Honor --

14 THE COURT: -- how important it was for me to  
15 explain that to you.

16 MR. HOCHBAUM: Your Honor, this defendant was never  
17 represented by Mr. Lashley.

18 THE COURT: Oh, I'm sorry. My mistake, but we went  
19 through all of your rights as to whether or not you have been  
20 given proper counsel. Now you're telling me you weren't  
21 given proper counsel. My mistake. I thought you were -- Mr.  
22 Lashley was your attorney because that was the arguments that  
23 were made about him. I didn't realize you had similar  
24 complaints. This is the first I'm really hearing of that so  
25 specifically. Go ahead. I'm sorry, my apologies.

1           DEFENDANT GERARDO CARRETO: How could I go to  
2 trial? First of all, I have no relatives here. No one. I  
3 had no proof. Everything had to come from Mexico. I don't  
4 know. I'm confused now. I don't know what to do. There is  
5 evidence that shows that I'm not guilty. There's a video  
6 where more than one victim threatens death and I don't know  
7 why. Now the girls are alleging this. I don't know. We  
8 were never allowed to speak with them. Supposedly she's my  
9 wife supposedly because -- I don't know what's going on.

10           THE COURT: Okay. Anything else?

11           DEFENDANT GERARDO CARRETO: Please have mercy.  
12 Show the evidence. Please. Think that it is my life out of  
13 state and I have a daughter; nine year old daughter. She  
14 said eight years. She never dealt with my daughter. She  
15 never bothered to make a phone call and I never forbid her to  
16 do anything. She could have gone any day at any time. What  
17 was the pressure on her? What was -- what were the threats?  
18 When my daughter had her three year birthday, her mother and  
19 her sister were at the party. Everything she has said is a  
20 lie.

21           And if it's true that when I left her, why did she  
22 continue with prostitution? That makes no sense. They had a  
23 cellular phone. They could go out at any time they wanted.  
24 There's evidence of that. Unfortunately, it all came too  
25 late because it's all in Spanish. Have mercy. It's my life.

1 Be merciful.

2 THE COURT: All right. In imposing sentence, the  
3 Court considers the advisory guideline range of 360 months to  
4 life and also the factors set forth in 18 United States Code  
5 Section 3553(a). And in particular, the following aspects of  
6 that subsection. One, the nature and circumstances of the  
7 offense and the history and characteristics of the defendant.

8 In that respect, the nature and circumstances of  
9 the offense I find to be appalling. We're not talking about  
10 one victim. We're not talking about two victims. We're  
11 talking about multiple victims that the defendant pled guilty  
12 to violating in a number of ways.

13 And the Court doesn't have, as hard as I have  
14 searched, the proper words to express the Court's shock and  
15 disgust for the nature of the criminal behavior of this  
16 defendant. The Court cannot overlook and will not overlook  
17 the nature of the multiple charges and the pleas by the  
18 defendant to each and every one of those charges, the  
19 physical factors associated with them, the vulnerability of  
20 the victims and all of these other aspects that make these  
21 crimes horrendous.

22 Now, the statute also speaks about the need for the  
23 sentence imposed to reflect the seriousness of the offense,  
24 to promote respect to the law and to provide just punishment  
25 for the offense. And also talks about the need to afford

1       adequate deterrence to criminal conduct in the United States.  
2       I'm not going to speak about Mexico. I have great respect  
3       for the country, Mexico. I can only talk about the laws of  
4       the United States which I am familiar with.

5               We do not condone the crimes that you have pled  
6       guilty to and sex trafficking and all these other crimes that  
7       you have pled guilty to are things which, in this country of  
8       ours, we take a very, very very dim view of.

9               And it's, I think, terribly important in particular  
10      in this case to send a message loud and clear that people --  
11      I don't care where they come from, whether they come from the  
12      United States, Mexico, any place.

13              If they commit these crimes in the United States,  
14      they're going to be treated harshly by the law. We look upon  
15      these types of crimes as amongst the most seriousness -- I  
16      should say amongst the most serious of crimes that can be  
17      committed.

18              The violation of women, the disrespect for women,  
19      all of these issues are matters which we take quite seriously  
20      in this country and our laws reflect that. And a stiff  
21      sentence is required here in my opinion to send a clear  
22      message that these types of criminal conduct will not be  
23      tolerated under our laws.

24              And of course, you know, we want to protect the  
25      public from further crimes of this nature. There's nothing

1       that suggests to me that the defendants would not return to  
2       their crimes. They have a hard time accepting responsibility  
3       for their acts here. We've discussed that at length and I  
4       think those factors all suggest that the Court must deal  
5       harshly in sentencing this defendant.

6               I don't see any particular history or  
7       characteristics of the defendant that weight so heavily in  
8       his favor to great the type of leniency that the defendant  
9       would like to have the Court visit upon.

10              I've considered all the factors under 3553(a), as  
11       well as the advisory guideline range and I think the  
12       reasonable sentence in this particular -- in this case is 50  
13       years of incarceration on counts 2 through 6. They will run  
14       concurrent on each other. There will be five years of  
15       supervised release with a special condition that the  
16       defendant, if deported, may not re-enter the United States  
17       illegally.

18              Respect to counts 1 and counts 7 through 27, there  
19       is a five year maximum will be imposed on each count. They  
20       will be concurrent to each other and concurrent to the 50  
21       years imposed on counts 2 through 6 all to run concurrent  
22       with each other.

23              There is no fine that's going to be imposed upon  
24       the defendant. He doesn't have the capacity to pay a fine.  
25       There's a mandatory \$2,700 for special assessment purposes.

1 That's \$100 for each of the 27 crimes that the defendant has  
2 pled guilty to.

3 There are general conditions of supervised release,  
4 which the Court is going to give to the defendant. I should  
5 say on counts 1 and 7 through 27, the period of supervised  
6 release is three years. That will run concurrent with the  
7 five years in respect to the other counts.

8 The general conditions of supervised release are  
9 begin given to the defendant in Spanish and you are to read  
10 them and to abide by their conditions if and when they become  
11 applicable.

12 Last, there is nothing that tells me that you have  
13 waived your rights of appeal.

14 MS. RYAN: That's correct, Your Honor.

15 THE COURT: And so I advise you at this time that  
16 you have that right. And certainly, I would encourage you to  
17 exercise that right. Considering the stiff sentence I've  
18 imposed upon you, you would be fool hearty not to try to get  
19 that overturned. And you would protect your rights by asking  
20 for counsel to be assigned to represent you on appeal, if you  
21 were not able to afford to pay for counsel.

22 And in any event, a notice of appeal would have to  
23 be filed within 10 days that the written judgement will be  
24 entered and you would have to perfect your appellate rights  
25 thereafter by -- within 30 days, unless you were to get an

1 extension of time from the court of appeals, which  
2 undoubtedly would be given to you. You can make application  
3 if you need more time to perfect your rights at least to  
4 prepare the record and the appeal and do whatever else you  
5 have to do firm up your appellate rights.

6 Now is there anything the Court may have  
7 inadvertently omitted?

8 MS. RYAN: There's one thing I've noticed, Your  
9 Honor. It's really more of a --

10 THE COURT: There's one thing I'm going to say.  
11 Maybe it's the same thing you're thinking of.

12 Because I've sentenced you to a period of  
13 incarceration in excess of 24 months from the lower level of  
14 the advisory range, it may well be that the law still  
15 requires me to state specifically the reasons why I've done  
16 that, since there's a great separation.

17 I'm not so sure that that still applies given the  
18 advisory nature of sentences now, but in any event, for all  
19 the reasons that I explained to you, I feel that the 600  
20 months is cundicated (phonetic) here. Three hundred and  
21 sixty months, which is the low end of the advisory range, I  
22 don't think would be adequate for purposes of the deterrence  
23 and respect for the law and all these other factors I have  
24 set forth with you. So those same factors have informed the  
25 Court that the sentence should be the 50 years.



1 Anything else, Ms. Ryan?

2 MS. RYAN: One thing, Your Honor. Under the  
3 statute that this defendant's been convicted of, there's a  
4 mandatory restitution provision.

5 THE COURT: I notice that, but the presentence  
6 report suggest that there's no way of determining whether  
7 there is restitution in this case.

8 MS. RYAN: We would like the opportunity to brief  
9 that, Your Honor. We have a 90 day period after the judgment  
10 is entered in the case in order to do that. Especially based  
11 on the information we've learned today that they've been able  
12 to pay for an investigator down in Mexico. They've been able  
13 to retain counsel. There may be funds that are available and  
14 should be owed to the victims.

15 THE COURT: I'm not going to impose that now  
16 because based upon the information that I have, there's no  
17 basis for me to impose any restitution sum. If you think you  
18 have rights within 90 days to make submissions to me, I'll  
19 take it under advisement. But, you know, as a practical  
20 matter, I don't know really whether it's really fruitful for  
21 you to pursue that, but I don't want to preclude you from  
22 exercising your rights to do so.

23 MS. RYAN: We'll look into it. Thank you, Judge.

24 MR. MUSA-OBREGON: Your Honor, in light of the  
25 extensive -- enormous sentence you have imposed on my client,

1 we would ask for -- to foreclose as possible and  
2 (indiscernible) restitution. Mr. Carreto has already been  
3 (indiscernible) on probation (indiscernible) --

4 THE COURT: Well, if restitution is mandatory and  
5 there is a basis for it, then I have no flexibility and --

6 MS. RYAN: That's correct.

7 THE COURT: -- choice, but, you know, I suggested  
8 to the government that maybe under the circumstances, you  
9 know, you might be hard press to find a valid basis for  
10 restitution in this case so we can serve an end to all of  
11 this at this particular time. Think about that.

12 Anything else?

13 Just one second.

14 (Pause/Court and clerk confer.)

15 THE COURT: I think that completes the sentence.  
16 We'll take a 10 minute recess before we proceed with the next  
17 sentence.

18 (Recess 3:15 p.m. to 3:43 p.m.)

19 THE COURT: We've already flushed out all the  
20 preliminaries and we have the presentence report here, and I,  
21 you know, rejected the application to adjourn the matter, so  
22 this matter will go forward for sentencing now.

23 Have you given your client, Josue Flores Carreto, a  
24 copy of the presentence report, Mr. Kulcsar?

25 MR. KULCSAR: Yes, I have reviewed it with him with

1 the assistance of a Spanish speaking paralegal.

2 THE COURT: You were there at the time?

3 MR. KULCSAR: I'm sorry, Your Honor?

4 THE COURT: You were there at the time? Was the  
5 presentence report read to him and all its essential aspects?

6 MR. KULCSAR: Yes.

7 THE COURT: And you were there and you discussed it  
8 fully with him?

9 MR. KULCSAR: Yes.

10 THE COURT: And he understands his context. You're  
11 satisfied with that?

12 MR. KULCSAR: Yes.

13 THE COURT: All right. So let me tell you what I  
14 have here. Of course, the underlying plea minutes of April  
15 5, 2005 will be deemed to be part of the sentencing file.  
16 The presentence report is dated January 25, 2006. Of course  
17 in many respects, it's similar to Gerardo's presentence  
18 report, but we'll go through very specifically.

19 I have the sentencing recommendation and I take it  
20 you have received a copy of it, Mr. Kulcsar?

21 MR. KULCSAR: Yes, Your Honor.

22 THE COURT: And the government of course has it.  
23 And the recommended sentencing here is the same for this  
24 defendant as for his brother who was just sentenced, and that  
25 was 35 years on counts 2 through 6 and five years on counts 1

1 and 7 through 27 all concurrent. And the comments are  
2 basically the same as the comments in respect to his brother.

3 Now in addition I have the joint letter of April  
4 24th, 2006 that was submitted by Mr. Alonso and the two  
5 Flores's and I referred to that before, and that's signed by  
6 each of them. And I have Mr. Kulcsar's letter of April 22nd,  
7 2006, speaking about three level downward adjustment for  
8 acceptance of responsibility and the objection to the two  
9 level upward adjustment for obstruction of justice. And a  
10 sentencing sheet I have in the file as well.

11 And then I have the letter from the government  
12 signed by Daniel Alonso -- the Government's Daniel Alonso and  
13 Ms. Ryan. That's dated April 5, 2005. And that's in respect  
14 to the *Pimentel* letter. And think that's all that I have in  
15 respect to the sentencing file, except for of course the  
16 government's letter that I mentioned before in respect to all  
17 three defendants which will be deemed part of this file also.  
18 And that was dated, I think, April 26.

19 Mr. Innelli, that letter may be in the other file.  
20 We'll make copies of that letter of the government and place  
21 them in each of these files.

22 MS. RYAN: I have extra copies with me, Your Honor.  
23 I'm happy to give those to the Court. If you like.

24 THE COURT: Well, let me have it in front of me  
25 now.

1 THE CLERK: It's not here, Your Honor.

2 THE COURT: We can make the copies --

3 THE CLERK: It's not in this file.

4 (Pause/Court and clerk confer.)

5 THE COURT: All right, I do have it. It was just  
6 buried under some papers. So that will be deemed part of  
7 this file as well. And there's Exhibit A annexed thereto.

8 Is there anything, Mr. Kulcsar, that I don't have  
9 that I should have?

10 MR. KULCSAR: I assume, Your Honor, before getting  
11 into a great deal of detail, you're going to make the same  
12 adjustment with respect to the physical injury claim that was  
13 put forth.

14 THE COURT: What I want to do is go through count 1  
15 and I think this will get a -- probably come out the same as  
16 his brother's, but we'll make the same adjustments here.  
17 Let's turn to them now.

18 And on page 34, with count 1, act A, we'll have an  
19 adjusted offense level of 30 -- well, we want to talk about  
20 that. It may be 39. Here we have the obstruction of justice  
21 aspect here and so we want to separately consider that. My  
22 guess is that when all is said and done, it'll come out  
23 probably in the same range, but we still have to be  
24 circumspect in making these advisory guideline calculations.

25 But the government says that there was this

1 recorded phone conversation with Veronica, is it?

2 MS. RYAN: No, Your Honor. It's Jane Doe No. 8  
3 (indiscernible) Mexico. And her name -- her first name is  
4 Minerva.

5 THE COURT: Minerva.

6 MR. KULCSAR: That's the same person that's  
7 allegedly the victim of the bodily injury for whom we have  
8 a --

9 THE COURT: Right.

10 MR. KULCSAR: -- photograph showing that she was  
11 not disfigured or scarred.

12 THE COURT: But we do have the actual transcript of  
13 the conversation and the conversation tells her that, you  
14 know, you know the right thing to do, stuff like that.  
15 There's certainly at the very least a veil threat. And after  
16 that she stopped cooperating.

17 Let's hear from the government.

18 MS. RYAN: That's exactly right, Your Honor. When  
19 the government was investigating this case, we had the  
20 opportunity to meet with her and speak with her and she was  
21 cooperative. Then the defendant intervened and he had, I  
22 believe, two telephone conversations with her that we have  
23 recordings of that were submitted to the Court in attachment  
24 to our pretrial letter that the Court's referred to already.  
25 And during those conversation, the defendant made it clear to

1 her that there would be adverse consequences if she continued  
2 to cooperate with the government. And in the second  
3 conversation, she reported back to him that she had been  
4 asked to come to the United States to testify at the trial  
5 and that she would not be doing so.

6 THE COURT: Yes.

7 MR. KULCSAR: And in that regard, Your Honor, what  
8 I would like to have presented to the Court is I offer the  
9 testimony of William LaCosta, who's prepared to testify under  
10 oath and I'd offer him now as a witness for the defendant.

11 MS. RYAN: This is highly irregular, Your Honor.

12 THE COURT: Well, but you see I have his actual  
13 words here in the attachment to the government's letter. And  
14 specifically, we're looking at -- let's see what the exact  
15 words are.

16 Where is it in your attachment?

17 MS. RYAN: I'm looking now, Your Honor.

18 (Pause.)

19 THE COURT: It goes for many pages. I'm just  
20 trying to find the exact location.

21 (Pause.)

22 THE COURT: Well, look, I'm looking at this thing  
23 in content. You know, at the end, she says take good care of  
24 yourself and pray a lot to God and that type of thing. So,  
25 you know, to the extent that there was this veil threat, I'm

1 not going to give it any credence, looking at the transcript  
2 as a whole and will not give two levels for obstruction of  
3 justice. I don't think it's explicit enough, especially in  
4 the context of the entire recording, so the adjusted offense  
5 level will be 37. Okay. I made that determination.

6 Now let's turn to count 1, act B. I'm going to  
7 reduce that from 39 to 37 also to be consistent with what I  
8 just did.

9 Anything else, Mr. Kulcsar?

10 MR. KULCSAR: No, Your Honor.

11 THE COURT: Okay. So, I'm going to do the same  
12 thing with the next count. Paragraph 112 will be 37 instead  
13 of 39. The same thing in -- on paragraph 118. That becomes  
14 37.

15 Now let's take a look at count 1, act B, the  
16 conspiracy to engage in sex trafficking of Jane Doe 5. We  
17 have that 16 year reference here in paragraph 121. For  
18 consistency purposes, I'm not going to apply that. So it's  
19 two levels off. And two levels off obstruction of justice.  
20 So that bring us down to 37 as well.

21 Next one, count 1, act F, the adjusted offense  
22 level will be 37, since I'm striking out once again the  
23 obstruction of justice. Those will be consistently struck.

24 So then turn to page 27. The -- there's no  
25 obstruction of justice. It's 37 again.



1           And in respect to count 1, act H, there will be two  
2       changes. One will be paragraph 140, the permanent scarring.  
3       And, you know, I'm making determinations consistent with what  
4       I previously have ruled without having to, you know, repeat  
5       everything.

6           MS. RYAN: Yes, Your Honor, I -- the government  
7       understood that.

8           THE COURT: All right, and so there's no  
9       obstruction of justice, so that's a 37 as well.

10          And now count 1, act 1 respect to Jane Doe, we just  
11       eliminated the obstruction of justice, so that's 31.

12          And count 7, transportation for purposes of  
13       prostitution of Jane Doe 1, the change there will be the  
14       obstruction of justice, so that will be 39. The reason why  
15       it's not 37 is because of where you get the two level  
16       enhancement under 2H4.1(b)(4)(d).

17          MS. RYAN: That's correct.

18          THE COURT: Count 8, the transportation for  
19       purposes of prostitution of Jane Doe 2, paragraph 160, we're  
20       eliminating two levels there for consistency purposes, as  
21       well as the obstruction of justice. So that comes out to 37.

22          Count 9 will --

23          MS. RYAN: I'm sorry, Your Honor, I may have  
24       misunderstood you on the count 8 calculation.

25          THE COURT: Well, count 8 -- oh, I made a mistake

1 here. The specific offense characteristic under  
2 2H4.1(b)(4)(b) remains.

3 MS. RYAN: Correct. Okay.

4 THE COURT: But what does not remain is the  
5 adjustment for obstruction of justice. So we'll be left with  
6 39, correct?

7 MS. RYAN: Thirty-nine, yes.

8 THE COURT: Sorry. And then on count 9, it's 39  
9 also, correct?

10 MS. RYAN: Yes.

11 THE COURT: And count 10 will be 39. And then  
12 count 15, the obstruction of justice once again, that will  
13 reduce it to 37. And then count 15, act B, once again is 37.  
14 Count 15, act C is once again 37.

15 I think it's understood that we really are  
16 incorporating much of what we said in the sentence of  
17 Gerardo, so --

18 MS. RYAN: Yes, Your Honor.

19 THE COURT: -- you know, that should be deemed to  
20 be incorporated by reference in all relevant respects.

21 Now count 15, act D is 37. Once again, when I say  
22 37, invariably I'm eliminating the adjustment for obstruction  
23 of justice.

24 Count 15, act E will be 37 because we're  
25 eliminating obstruction, as well as the victim being less

1       than 16.

2               Count 15, act F will be 37.

3               Count 15, act G will be 37.

4               And count 15, act H will be 37 because we're  
5       eliminating the scarring and the obstruction of justice.

6               And then the alien smuggling and alien smuggling  
7       for financial gain will be a 21 adjusted level, since we're  
8       once again eliminating obstruction of justice.

9               And then we deal with the multiple count  
10       adjustment. So let's see what we have here.

11              Which are the two 39's that remain?

12              MS. RYAN: Those were counts 7, 8, 9 and 10 are the  
13       level 39's. But I think based on the grouping, Your Honor,  
14       we're going to end up with the same -- at least as far as the  
15       units goes, the same --

16              THE COURT: You wanted the same --

17              MS. RYAN: -- combined levels.

18              THE COURT: You wanted the same eight and a half.

19              MS. RYAN: Yes.

20              THE COURT: There's no change in that. Unless --

21              MS. RYAN: There's no change in that.

22              THE COURT: Unless we inadvertently slipped up on  
23       something.

24              So the units will reflect the adjustments which we  
25       made to the adjusted offense level and the total number of

1 units will still be eight and a half. That does work out  
2 that way, I believe.

3 The highest count is 36, right?

4 MS. RYAN: Yes, Your Honor.

5 THE COURT: Less the max of five for the multiple  
6 counts. That gives us 44 and as the combined adjusted  
7 offense level. Am I missing anything? I don't think so. 44  
8 -- what's the other one for his brother?

9 MS. RYAN: 42.

10 THE COURT: The difference being --

11 MS. RYAN: I think we may actually be at a 42 in  
12 this case. I'm not certain, Your Honor, I'll have to look at  
13 it again. But I think because of the way the counts are  
14 grouped, I believe Level 39's that we had for Count 7, 8, 9  
15 and 10 were also level 39's in Gerardo Flores Carreto's  
16 revised presentence report, but because of the way they're  
17 grouped in with the other counts, the adjusted level is the  
18 37, not the 39.

19 THE COURT: What is our calculation here? The top  
20 count is 39. The top count for Gerardo is --

21 MS. RYAN: It was, Your Honor, but I think because  
22 of the way they're grouped together it's my understanding  
23 when I went through this more carefully before we came here  
24 today, that even with the -- because there were more 37's in  
25 the group than 39, it grouped to a 37.

1 THE COURT: I don't think so.

2 MS. RYAN: Okay. I could be wrong.

3 THE COURT: I don't see any different here between  
4 Gerardo's and -- it's so easy to slip up here, it's so  
5 complicated.

6 MS. RYAN: It is.

7 THE COURT: All right. Let me see Gerardo again,  
8 Mr. -- do you have it here?

9 MS. RYAN: Your Honor, I'm looking at page 49 of  
10 Gerardo Flores Perez' presentence report.

11 THE COURT: We said the greater -- there was no 39.

12 MS. RYAN: I believe that Count 7 in his  
13 calculation as well was also a 39. I may be --

14 THE COURT: We made a mistake then. We made a  
15 mistake then. I have nothing but 37's. There was Count 10 is  
16 a 39. We made a mistake. It's as simple as that.

17 So you know what I'm going to do here -- well, yes,  
18 if you look in Gerardo on Count 10, it gives a 39.

19 MS. RYAN: I think as Count 7, 8 and 9, Your Honor,  
20 because the two-level enhancement comes from the other  
21 felonies enhancement, which we discussed during that  
22 sentencing.

23 THE COURT: Just one second.

24 (Pause.)

25 THE COURT: Yes, you're right. Count 9 is 39.

1 MS. RYAN: And we all agreed on that at the time.

2 THE COURT: It's painfully apparent to the Court  
3 that we made a mistake in finding that the highest level for  
4 multiple count purposes was 37. It should have been 39.

5 Now, that's a mistake that the Court made in  
6 Gerardo. It's as simple as that.

7 And I guess the government can appeal because the  
8 Court made that mistake, but I suspect the government's not  
9 going to do that.

10 It would be easier for purposes of not having a  
11 disparity between similarly situated defendants for you all  
12 to agree that the defendant will get the benefit of a mistake  
13 I made with respect to his brother's calculation and will  
14 deem the combined adjusted offense level to be 42 here, just  
15 like his brother, otherwise we'll have a sentencing  
16 despaired. And I think we want to avoid that. Does that  
17 make sense, Ms. Ryan?

18 MS. RYAN: Yes, it does, Your Honor.

19 THE COURT: Okay. So we'll deem it 42 and this  
20 defendant gets the benefit of the mistake we made and his  
21 brother suffers.

22 So with 42 and a criminal history category of one,  
23 we still have 60 to life as the advisory guideline range.

24 All right. Mr. Kulscar, we're all grown up's here.  
25 I want to give you every opportunity to tell me why I should

1 sentence Josue differently than his brother. We're concerned  
2 about not having disparities amongst similarly situated  
3 defendants, and this seems to be the situation.

4 MR. KULSCAR: At this point, Your Honor, we've  
5 resolved the issue of acceptance with respect from my client.  
6 I'd like to raise one point I don't think was fully  
7 considered, with all due respect to the Court.

8 Your Honor --

9 THE COURT: Just one second. I'm treating the  
10 adjusted offense level at 37 and with five increase for the  
11 multiple count, that's 42.

12 I'm not giving him any acceptance of responsibility  
13 because -- for the same reasons that I did not give his  
14 brother acceptance of responsibility, this defendant also  
15 wants to withdraw his guilty plea and we've been through that  
16 before and that doesn't sound like acceptance of  
17 responsibility to me.

18 MR. KULCSAR: I think that's because you may not  
19 have considered what I'd like to present to Your Honor -- as  
20 I was saying actually, watching you do all those numbers, it  
21 flashed through my mind how The Bible might have been changed  
22 if Solomon had the guideline before him when he had to make a  
23 decision on his motherhood of a trial.

24 THE COURT: I agree with that, but you see the  
25 supreme court in its wisdom has given district court judges

1 very important flexibility and has imposed a -- or created a  
2 standard of reasonableness and that takes away the sting of  
3 the guidelines. It should be perfectly apparent that I'm not  
4 really wedded by the guidelines here.

5 MR. KULSCAR: (Indiscernible) left to the  
6 discretion of the judges. Let me just address the exceptions  
7 issue.

8 My reading of the transcript of the plea, since I  
9 read it long after the event and wasn't there at the time,  
10 one thing that struck me was the Court's apparent concern  
11 about the fact that on the eve of -- after a jury had been  
12 selected, as I understand it, the defendants were going to  
13 plead guilty to all of the charges.

14 My understanding is that for some time before that  
15 day, there had been many discussions about a plea and my  
16 understanding of it is that the problem wasn't -- the  
17 government was insisting on a global plea.

18 My client was willing to enter a plea but was  
19 precluded from doing so by the fact it was not a global plea.  
20 He wasn't able to enter the plea that had been offered by the  
21 government, which as I understand it, was significantly, very  
22 significantly, less than what they now confront.

23 So I think that having that background, the  
24 defendant's desire to withdraw the plea is partly, I think,  
25 based on the fact that as part of the plea he didn't allocute



1 just for the crime for which he was charged. He was required  
2 to allocute for a lot of the things that are now part of the  
3 sentencing enhancements, and I think that that's a large  
4 portion of the problem that he has with respect to going  
5 forward with the guidelines calculations as they are.

6 And I think part of that is based on the fact that  
7 this Court has heard perjured testimony from one victim.  
8 Perjured testimony.

9 MS. RYAN: I object to that, Your Honor.

10 MR. KUSCAR: Testimony in front of you that was a  
11 lie, as I understand it -- one of the victims, Olivia, as I  
12 understand it (indiscernible) and testified under oath and  
13 part of what I understand she said was untruthful.

14 But other --

15 THE COURT: I don't know what part was untruthful.

16 MR. KUSCAR: I'm offering Mr. LaCosta again as  
17 witness under oath. He also has videos which I'm offering --  
18 willing to offer into evidence at the sentencing hearing, and  
19 the second victim.

20 THE COURT: Do you want to have some sort of a  
21 hearing?

22 MR. KULCSAR: Well, I don't know -- yes. I mean,  
23 for the extent that --

24 THE COURT: A hearing on what issue?

25 MR. KULCSAR: An issue as to the victim's -- one

1 victim's truthfulness and the fact that another victim came  
2 before Your Honor and refused to testify under oath and I  
3 believe the reason for that is because of what was presented  
4 in the presentence report is not truthful.

5 And I think that clearly, Your Honor in sentencing  
6 the co-defendant was -- I can only imagine affected by what's  
7 in the presentence report and by what you heard in person  
8 today.

9 My problem is I don't have any personal  
10 relationship with this defendant. A lot of clients you  
11 represent after a long period of time you develop a certain  
12 closeness to.

13 But my concern is that I was mentored in the  
14 Manhattan D.A.'s Office under Frank Hogan and our  
15 responsibility, as I always understood it, was if at the last  
16 minute something was presented to us that we should consider  
17 in any way that impacted on guilt, innocence or sentencing,  
18 we were taught that we should look at it and make sure that  
19 we're doing the right thing.

20 I haven't seen any of the things that Ms. LaCosta  
21 apparently has brought.

22 THE COURT: The problem I have here is that I have  
23 your client who pled guilty to 27 crimes. I painstakingly  
24 went over his rights, made sure that there was a proper  
25 allocution and he allocuted to significant criminal behavior.

1 Now listen to me. Okay?

2 And that's the benchmark for what I am doing today.  
3 And I take these types of pleas under oath when I have spent  
4 an enormous amount of time making sure that the defendant is  
5 satisfied with his lawyering, understands he can't withdraw  
6 the guilty plea and allocutes to 27 crimes.

7 When then somebody comes here at the veritable  
8 moment of sentencing with some Spanish document which is not  
9 even translated and thrusts this upon the Court after this  
10 matter has been adjourned a number of times and now is going  
11 to use that as the peg for all sorts of applications that  
12 would undoubtedly be forthcoming, 2255's, whatever, that's an  
13 enormous imposition on the Court.

14 I don't disagree with you that if anything has come  
15 to the Court's attention prior to sentencing that I should  
16 consider it and I would consider it.

17 But this is the basis for the application to  
18 withdraw his guilty pleas. The defendant has all the  
19 knowledge in the world that was necessary for him to decide  
20 whether or not to plead guilty. We had the jurors ready to be  
21 selected. Did we actually select the jurors?

22 MS. RYAN: We did, Your Honor.

23 THE COURT: We selected the jury and we were ready  
24 to go. And I asked the defendants why don't you want to go to  
25 trial and they said well, you know, I guess because they felt

1 it would be in their best interest to accept responsibility.  
2 There was some reference made that this would be one fact  
3 that they would get the benefit of acceptance of  
4 responsibility and I was prepared to give them the benefit of  
5 that, until what happened today.

6 Now, we don't even know what's in that document.  
7 You thrust it at the Court here in some sort of a veiled  
8 effort, you know, to sort of get a further adjournment here.  
9 It just comes with a lot of baggage to it. All right.

10 And the best that I can glean from giving our  
11 Spanish speaking colleague, Senor Musa-obregon, an  
12 opportunity to tell me what's in it is that it relates to  
13 somewhat three victims having said something in some court  
14 proceeding in Mexico, but I'm dealing with nine victims here;  
15 not three victims. And I'm dealing with a guilty plea. And  
16 your clients know all the facts that were necessary to know,  
17 including what goes on and what doesn't go on in Mexico, who  
18 these people were.

19 If they really believed that these women were not  
20 being candid, that there was no basis for the government's  
21 charges, they had the opportunity to say not guilty, rather  
22 than guilty.

23 That's why I look upon this with sort of -- not in  
24 a naive way as a judge on the eve of sentencing.

25 So I thought I would owe you the courtesy of that

1 explanation. And there may be other good reasons that upon  
2 reflection by higher authorities they could think of why I  
3 should not allow yet a further continuance and allow  
4 testimony about all of this. But this is the best that I can  
5 do on the spot.

6 But once again, he pled guilty to 27 counts and at  
7 best, maybe two or three of those were Jane Doe's who he now  
8 claims said something down in Mexico that you think, you  
9 know, justifies aborting these proceedings and having  
10 continued adjournments and taking testimony -- I just don't  
11 think looking at this thing in balance that it's unfair to  
12 your client to turn thumbs down on that.

13 That doesn't mean you can't talk to me about it,  
14 but I'm not going to take testimony about what may or may not  
15 have happened in Mexico under all these circumstances in  
16 respect to three out of at least nine victims. Okay? So  
17 what else do you wish to say?

18 MR. KULCSAR: Well, Your Honor, my purpose was not  
19 to undermine the integrity of a plea or the allocution that  
20 was taken by the Court.

21 THE COURT: I interrupt -- my apologies, to add one  
22 thing else. And certainly, you can interrupt me, too, as  
23 thoughts pop up into our heads.

24 But he wasn't asking, nor were the other defendants  
25 asking to withdraw their guilty plea in respect to three

1 victims. He wanted me to throw out his guilty plea with  
2 respect to everybody. That's simply not -- it's the  
3 antithesis of the acceptance of responsibility.

4 MR. KULCSAR: Well, I don't know to what extent  
5 information that was presently available might have any  
6 affect on the Court in imposing a sentence. I don't know  
7 because Your Honor hasn't heard it and --

8 THE COURT: I know that and if, in fact, a higher  
9 authority thinks I should have adjourned the matter, given  
10 you an opportunity to get a translation of that and take into  
11 consideration on the issue of whether the plea should be  
12 withdrawn --

13 MR. KULCSAR: May I have one second? I want to  
14 ask --

15 THE COURT: Then I'll have to do it. But I just  
16 don't feel that that's the right thing to do here now.

17 MR. KULCSAR: May I have one moment, Your Honor?

18 (Pause.)

19 MR. KULCSAR: One moment. I apologize?

20 THE COURT: Yes, go ahead. Take your time.

21 (Pause.)

22 THE COURT: Ms. Ryan?

23 MS. RYAN: Yes, Your Honor.

24 THE COURT: You know, the issue that has been  
25 framed here, that you're going to have to possibly argue in

1 the Court of Appeals. I just wanted to make a clear record of  
2 where we're at. And I don't mean to preclude you.

3 If you suggest to the Court that there should be an  
4 adjournment under all of these circumstances, you can do so.  
5 I'm not hearing that recommendation from you, but I don't  
6 want you to feel as if I'm forcing the government into an  
7 intolerable position here.

8 MS. RYAN: Certainly not, Your Honor. The  
9 government's in complete agreement with the Court's rationale  
10 as to why an adjournment at this point would be  
11 inappropriate.

12 THE COURT: All right. I just want you to know that  
13 you have this option here.

14 MS. RYAN: Thank you very much, Judge.

15 MR. KULCSAR: Thank you, Your Honor. I  
16 understand, for example, just by way of proffer that Ms.  
17 LaCosta has videotaped interviews of the mother of Veronica,  
18 one of the persons that came before Your Honor and made a  
19 (indiscernible) statement. That woman is the person that --  
20 according to what I understand is in the transcripts,  
21 precipitated the investigations in the trials in Mexico for  
22 which the defendants were found not guilty.

23 Presumably, those documents also demonstrate the  
24 fact that Veronica -- withdrawn. The mother of Veronica was  
25 involved with a group of persons that kidnaped the brother of

1 my client and held him for ransom -- I believe there's  
2 reference in the --

3 THE COURT: There's also some allegations and  
4 claims that have been going on forever. I'm sure of that.  
5 There'll be new allegations next month and next year.

6 MR. KUSCAR: The videotape itself is of very recent  
7 vintage. And I believe the fact of the matter is that there  
8 is a whole undercurrent for this case.

9 My client has admitted guilt for those things that  
10 he has done. I think that --

11 THE COURT: Look what he's allocuted to. I thought  
12 I made it clear before I'm going to sentence him based upon  
13 the crimes he allocuted to. That's what I'm going to be  
14 sentencing him, based upon that. The nature of those crimes,  
15 his circumstances, his personal characteristics, the need for  
16 deterrents and all those other factors. That's all I'm going  
17 to be doing.

18 The victim's statements I listen to because they  
19 would like to be heard. But his sentence is not going to be  
20 based upon the victim's statements and I don't think I've  
21 said I've even considered that.

22 I mean, the time that I think is warranted here in  
23 respect to his brother is based upon the comments which I  
24 made on the record and I think they all relate to 3553 and I  
25 think I expressed myself as clearly as I'm capable of doing



1 so.

2 So rest assured that my decision is not based upon  
3 any factors or circumstances that are not part of the record.

4 MR. KULCSAR: I would respectfully suggest one, to  
5 the extent that the guidelines are advisory and to the extent  
6 that Your Honor has a great deal of latitude, obviously in  
7 passing sentence, that the imposition of a sentence beyond  
8 the Level 41, which was originally anticipated, is not a  
9 reasonable sentence under law in the facts of the case.

10 THE COURT: You can argue that in the Circuit Court  
11 of Appeals that there's no question that Judge Block has  
12 looked upon these crimes are horrendous crimes. There's no  
13 question that I see a need for deterrents and to send a  
14 message and a powerful message because of the nature of these  
15 crimes and everything that flows from that.

16 And you can argue that it was not a reasonable  
17 sentence -- that 50 years for his brother, who may be here as  
18 well, though I'm not going to sentencing until I hear from  
19 everybody -- you can say that it was not reasonable. You can  
20 do that.

21 And this is one judge's view of it and I just have  
22 a very dim view of this case. So you know the record is  
23 clear. Go ahead. Anything else?

24 MR. KULCSAR: Well, I understand that this is one  
25 judge's view of it and I guess it's hard considering that I

1 spent many years prosecuting and trying murder cases and saw  
2 defendants who committed multiple murders getting 25 or 30  
3 years to life, which is still the standard in the state; that  
4 the sentence that this Court imposed on the co-defendant --

5 THE COURT: Because nobody was killed, right?

6 MR. KULCSAR: I'm sorry?

7 THE COURT: Because nobody was killed? I  
8 understand what you're saying. I mean, I've imposed sentences  
9 where there have been deaths involved that were significantly  
10 less than what I'm doing here. I don't think my reputation  
11 is one of being the toughest sentencer on the bench.

12 But in this particular case, the violation of women  
13 in this case, their whole modus operandi, the nature of the  
14 crimes, their insensitivity to humankind -- I know that  
15 nobody was killed, fortunately. But I still think that this  
16 type of punishment was warranted.

17 MR. KULCSAR: Well, okay, Your Honor. I know Your  
18 Honor's view is based on what you read in the presentence  
19 report and, obviously --

20 THE COURT: Not just based on --

21 MR. KULCSAR: Sorry?

22 THE COURT: You keep saying that it's based upon my  
23 sitting here while they pled guilty after a jury was selected  
24 to 27 heinous crimes and just treating women like garbage.  
25 They pled guilty to that. I'm not making this up. I just --

1 maybe I'm a male chauvinist pig, you know. I don't know. But  
2 it bothers me terribly that people should be so inhumane to  
3 their fellow human beings.

4 MR. KULCSAR: I wasn't -- I certainly don't mean to  
5 suggest that the Court shouldn't be bothered or upset, or  
6 distressed by any of the allegations and the defendant's  
7 plea. I was distressed myself.

8 But what I'm respectfully suggesting, Your Honor,  
9 is that a sentence of -- and the range that you sentenced the  
10 co-defendant to --

11 THE COURT: Is very severe.

12 MR. KULCSAR: -- is far in excess of what I think  
13 is a fair and appropriate and reasonable.

14 THE COURT: I understand. I understand where you're  
15 coming from. I understand that and I respect that. And this  
16 is just the way I see it.

17 I mean, it's -- judges are accused of playing God.  
18 We take these things very seriously. I think it should be  
19 very apparent how seriously I've taken this matter from the  
20 beginning. And that's why we have appellate courts. Maybe  
21 you'll be able to make the same arguments there and you can  
22 argue reasonableness.

23 MR. KULCSAR: I've never taken that view though.  
24 I've never -- I guess since I've been a trial lawyer all my  
25 life, I've never taken the view that we have a appellate

1 courts for that reason.

2 THE COURT: I think it's important for the  
3 appellate court to sit in judgement of what I've done here. I  
4 think that's part of our process and I would feel badly if  
5 that process did not unfold because I would feel more  
6 comfortable having judges on the Court of Appeals who are  
7 more learned than I am and more intelligent than I am review  
8 what I did in a case of this nature. And I hope that  
9 happens.

10 MR. KULCSAR: I really -- I don't want to have a  
11 philosophical -- to say it was wrong. I would just suggest  
12 that if I were where this prosecutor was and all the years I  
13 stood there and someone said look at something and I'd like  
14 to have an adjournment because I think it's significant and  
15 should be considered, I wouldn't object to that. I never did.  
16 And maybe that's because I was mentored when Mr. Hogan and  
17 then Mr. Morgenthau mentored Ms. Ryan's boss.

18 But in addition to that, Your Honor, I have nothing  
19 to add. I think Your Honor --

20 THE COURT: You've got a record and maybe the  
21 higher authorities would say under the circumstances I  
22 shouldn't have given you the adjournment. They know. It's  
23 not an unreasonable argument.

24 I just -- not at this time and not under all these  
25 circumstances and all for the reasons which I've explained

1       where I think it's appropriate here.

2               You see, it's not as if you come up with some  
3       proffer here and gave it to me yesterday even. It's not as if  
4       you're telling me something that would really significantly  
5       impact the guilty pleas. You're just talking about three  
6       people down in Mexico who apparently said something different  
7       there and I respect that.

8               There's guilty pleas. They know what they did.  
9       They were in full command of all the knowledge that they  
10      needed before they pled guilty.

11              Anyway, I respect your arguments. Does the  
12      government want to respond at all?

13              MS. RYAN: No, I don't think so, Your Honor. I  
14      would ask the Court's indulgence for me just to make sure  
15      that none of the victims wanted to speak.

16              THE COURT: Go ahead.

17              (Pause.)

18              MS. RYAN: Your Honor, one of the victims has  
19      something she'd like to add.

20              THE COURT: This young lady was here before. Tell  
21      us your name again.

22              MS. ROMERO: Veronica Romero.

23              THE COURT: All right. Now, you testified under  
24      oath -- not testified. You spoke under oath before, if I  
25      recall correctly, right?

1 MS. RYAN: I don't believe she did.

2 THE COURT: Oh, you did not. For some reason you  
3 didn't want to do that. So you have the right to make a  
4 statement. Go ahead.

5 MR. KULCSAR: Excuse me, Your Honor. I would ask  
6 for her take an oath.

7 THE COURT: No, I don't have to do that. It's not  
8 required.

9 MR. KULCSAR: I'm just asking if you would. The  
10 others did.

11 THE COURT: No, no. I gave them the option and I  
12 should not necessarily have even put them in that position.  
13 They don't have to speak under oath. There's nothing in the  
14 law that requires that. I just wanted to give them that  
15 option and -- for whatever reason. But she doesn't want to  
16 do that. Go ahead.

17 MS. ROMERO: I just heard that it is not  
18 appropriate that they be sentenced to the number of years  
19 that they were sentenced because they did not kill anybody.

20 But as far as I am concerned, it is a death. When  
21 I was pregnant, five months pregnant, when Josue arrived in  
22 New York he caused me to abort and as far as I'm concerned it  
23 was a killing that was not deserved for a human being to be  
24 killed in that way.

25 THE COURT: All right. Anything else you wish to

1 say?

2 MS. ROMERO: No.

3 THE COURT: All right. Fine. Anybody else wish to  
4 speak?

5 MS. RYAN: Not on this defendant, Your Honor.

6 (Pause.)

7 MS. RYAN: I may have spoken too quickly.

8 THE COURT: Yes. Your name again.

9 MS. CRUZ: My name is Maria Derayo Garcia Cruz.

10 THE COURT: Now, you did speak before with respect  
11 to Gerardo, correct? And if I recall, you chose to speak  
12 under oath.

13 MS. CRUZ: Yes.

14 THE COURT: And so I assume you still are doing  
15 this under oath, correct?

16 MS. CRUZ: Yes.

17 THE COURT: So what is it that you wish to tell me  
18 about this defendant, Josue?

19 MS. CRUZ: It's only a message. Just an  
20 evaluation as to the fact that this man does not value women.  
21 It's not just these women who are here. There are more women  
22 that this man has mistreated, that he has -- whose lives have  
23 been destroyed for both the women and their families. That's  
24 it.

25 THE COURT: Okay. Thank you very much. Anybody

1       else?

2                   MS. RYAN: No, Your Honor.

3                   THE COURT: All right. Mr. Josue Flores Carreto,  
4       of course, you're here. You know what I said in respect to  
5       your brother but nonetheless, sentences are all individual  
6       and I don't automatically sentence everybody the same way so  
7       I'm very much concerned about your particular circumstances  
8       and what, if anything, you wish to say to me before sentence  
9       is imposed.

10                  DEFENDANT JOSUE CARETTO: First of all, good  
11       afternoon. Inasmuch as the victims are here and I see the  
12       lady who is here, why doesn't she mention her husband. His  
13       name is Aliou (ph).

14                  So why is she referring to me? She's never lived  
15       with me. She's never known anything about my life. Why is  
16       she putting me in this conspiracy?

17                  I'm being put in it since '91 to this date. And  
18       between '91 and '96 I didn't even have a wife. I was in a  
19       group of Alcoholics Anonymous and I even have proof of that.

20                  In '96 I got together with Minerva Calderone. I  
21       got married to her and I haven't had any problems with her. I  
22       continued talking to her by phone and talking to her mom.

23                  Now, Ms. Veronica is complaining and she's saying  
24       that perhaps I harmed her. But why doesn't she say that it  
25       as she who was looking me up. When I was in Tijuana, she was



1 always calling me up by phone.

2 Her friends from where she worked. I have their  
3 testimony. They went to Mexico recently. And what I'm  
4 seeing is that we're being judged for the most minimal things  
5 that we did, but the proofs that we have otherwise -- don't  
6 want to hear them.

7 THE COURT: No, I certainly am listening to  
8 everything but for you to characterize that you're being  
9 judged on the minimal things that you did sounds to the Court  
10 to be just bizarre in the face of your pleading guilty to 27  
11 serious crimes involving multiple, multiple victims and where  
12 you acknowledged that you caused physical harm to these  
13 people, as well as sex trafficking for the purposes of  
14 prostitution and everything else you pled guilty to.

15 And when you speak like this, it doesn't seem as if  
16 you're accepting the fact that you did confess to many crimes  
17 of the most serious nature here and you seem to want to  
18 diminish them and you had all the knowledge in the world  
19 before you pled guilty of your acts and your so-called wife  
20 and your situations that you speak about. And nonetheless,  
21 you pled guilty to all these crimes.

22 You had every opportunity to go to trial and put  
23 forward a defense. You did not do that. You pled guilty.  
24 What else do you have to say?

25 DEFENDANT JOSUE CARETTO: How could have I

1 presented any defense? The attorney I had didn't even have  
2 any proof to be able to present them in my trial.

3 I wasn't going to go to a trial with nothing. And  
4 Veronica herself, when my brother was kidnaped, she helped  
5 them go and find and arrest the people who had kidnaped him.  
6 Yes, she was working in Puerla. She was working in  
7 prostitution, but she called us by phone and she said look,  
8 they're here in Puerla. Come pick them up.

9 And she knows that nobody was made to do anything  
10 by force here. Whatever was done was because they wanted it.

11 THE COURT: Well, that's not what you pled guilty  
12 to. Okay. I just find it so disingenuous for everybody to  
13 speak in terms of the fact that they're innocent of these  
14 charges, when they pled guilt to all 27 counts, including  
15 physical violence and everything else that went along with  
16 it.

17 I can read you back your own words, if you forgot  
18 what they were. What else?

19 DEFENDANT JOSUE CARETTO: Yes, I understand what  
20 you're saying, but then why -- now she's saying she's a  
21 victim. But when I would go to Chinagua, I would go pick her  
22 up and we would go and we went swimming. All of her friends  
23 knew that there was no force involved there.

24 THE COURT: But there are many other victims that  
25 you pled guilty to. Even if I were to credit everything you

1 say about Veronica, what explains the seven or eight other  
2 people here that you said you physically abused that you pled  
3 guilty to and you admitted being an organizer of the group of  
4 people involved here in sex trafficking, et cetera, et cetera  
5 and that you just don't want to talk about that. You just  
6 want to focus on the one person who spoke today.

7 I'm not necessarily going to sentence you because  
8 of that. I'm taking everything into consideration, including  
9 the way you speak to me and what you're saying. I'm giving  
10 you all the opportunities to speak. If you wish to say  
11 anything more, you can do so. You let me know.

12 DEFENDANT JOSUE CARETTO: But in any case, if I  
13 behaved so badly with the other girls, why is it that they  
14 allow me still to go into their houses, that they talk to me?

15 There are no victims. The only ones I can see are  
16 Minerva and Maricella Hernandez.

17 THE COURT: Anything else?

18 DEFENDANT JOSUE CARETTO: That's why I don't agree  
19 with the sentence and I would ask that you be fair with me. I  
20 don't feel that that's what's happening. This is abuse.

21 THE COURT: Okay. The sentence the Court will  
22 issue where will be the same as in Gerardo's situation. I  
23 want to avoid sentencing disparity, in addition to the fact  
24 that I considered the 3553 factors here to be of the same  
25 import as with the brother. They're tied together. They're

1 both organizers, joint organizers of this horrible criminal  
2 activity.

3 And once again, considering 3553(a) and all of the  
4 other aspects of 3553(a), I call attention to the horrific  
5 nature and circumstances of these 27 offenses. I don't see  
6 anything in the history and characteristics of the defendant  
7 that is terribly redeeming.

8 I think that, as I mentioned before, there's a  
9 terrible need here for a serious punishment to reflect the  
10 seriousness of the offense to promote respect for the law, as  
11 well as to provide just punishment and also to afford  
12 adequate deterrents and to protect the public from further  
13 crimes of the defendant.

14 Hopefully, this sentence will go a long way towards  
15 deterring others who may believe that they can engage in sex  
16 trafficking and all the types of things that are represented  
17 in this particular prosecution. I hope it has a chilling  
18 effect upon others, because these issues are serious.

19 The Congress of the United States has passed  
20 specific legislation, has made findings identifying the types  
21 of problems that these activities represent and the Court  
22 agrees that it should do -- make a statement consistent with  
23 Congressional concerns that we have to stop this type of  
24 things in its tracks and I think that this prosecution, even  
25 though it's going to result in a long period of incarceration

1 for these defendants, and justifiably so, will also serve the  
2 additional salutary purpose of deterrents and protection of  
3 the public.

4 So that will be Counts 2 through 6. 50 years on  
5 each count. They'll be concurrent, together with five years  
6 of supervised release with the special condition that the  
7 defendant was deported and reentered the United States  
8 illegally.

9 Counts 1 and 7 through 27 will carry five years of  
10 incarceration concurrent to each other, as well, as to the  
11 counts 2 through 6. There will be three years of supervised  
12 release that will be concurrent with the five years of  
13 supervised release. A \$2,700 special assessment, which  
14 reflects \$100 for each crime. The fact that it's \$2,700  
15 reinforces the seriousness of this criminal behavior. I don't  
16 think the Court has ever sat in judgement of defendants who  
17 have affected 27 crimes before.

18 I should add also the fact that the adjusted --  
19 the multiple adjustment was capped at five, just because  
20 that's the statutory basis.

21 But you know, substantively, the large number of  
22 these crimes that were committed, you know, would warrant  
23 some consideration for the fact that the -- if not for the  
24 cap the eight and a half levels would be indicated. I'm not  
25 punishing you for that. I'm just reflecting that the

1 multiplicity of the counts here I think adds to the Court's  
2 sense of the seriousness of the criminal conduct.

3 There are general conditions of supervised release,  
4 which is being handed to you in Spanish by the Court's clerk.  
5 I'm not going to fine you. You don't have the ability to pay  
6 a fine.

7 And last, you have absolute rights to appeal. My  
8 hope is that you will do so, because a matter of this  
9 seriousness where the Court has imposed a very harsh  
10 sentence, it would do the court some comfort to have three  
11 judges on a higher level review these proceedings,  
12 considering the importance of everything we've been speaking  
13 about and, of course, once again, the harsh sentence, which I  
14 consider to be reasonable under all of the circumstances.

15 And I think that that concludes the Court's  
16 sentence here. If you wish to exercise your right to appeal,  
17 you can make application for the appointment of counsel, if  
18 you cannot afford counsel and you would protect your rights  
19 to appeal by filing a notice of appeal within ten days after  
20 written judgement is entered protecting you within 30 days  
21 thereafter, unless you get some extension of time, which  
22 undoubtedly you will be able to get, I suspect, from the  
23 higher court that will be processing the appeal.

24 I think that concludes the sentence. Mr. Kulscar,  
25 I want to thank you for your comments. They were well taken

1 and well spoken. This is why sentencing is so difficult.

2 THE COURT: Anything else?

3 MS. RYAN: Your Honor, I just wanted to put on the  
4 record --

5 THE COURT: Just one second. Restitution again?

6 MS. RYAN: Well, yes. First the restitution again.  
7 The government -- we can figure out a way to calculate it --

8 THE COURT: Well, you just think about that  
9 carefully, because we've had a long sentencing and you may be  
10 within your legal right, but sometimes you look at the  
11 practical aspects of sentencing, as well as the strict letter  
12 of the law.

13 If you think there's something so compelling, then  
14 I'll give you your right to pursue your legal remedies, but  
15 at the same time, I would just ask you to think heavily about  
16 that before we come back to court again.

17 That concludes the sentence --

18 MS. RYAN: Your Honor, I'm sorry. There is one  
19 other thing I wanted to put on the record.

20 MR. HOCHBAUM: Well, my client was not able to be  
21 here, so --

22 THE COURT: Well, we're not dealing with his  
23 sentence right now. We will shortly. Go ahead.

24 MS. RYAN: I just wanted to indicate, Your Honor,  
25 that you may remember much earlier in the case the Court

1 signed a no contact order between the defendants and the  
2 victims in this case.

3 THE COURT: Just one second.

4 Mr. Hochbaum, if there's something we have to  
5 attend to, let me know. Is there a problem? Maybe I could  
6 help everybody.

7 MR. HOCHBAUM: Judge, I'm getting directions from  
8 marshals as to how I should deal with the Court. I don't  
9 think it's appropriate for them to tell me how to deal with  
10 my client. Within the confines of that absolutely. That's  
11 their job.

12 THE COURT: Let's just try to move on with the  
13 heavy business at hand. If there's something you feel that  
14 you want to bring to my attention as an officer of the court  
15 and as a respected attorney, I'll certainly hear you out.  
16 Let me just finish with this first.

17 MS. RYAN: Thank you, Your Honor.

18 THE COURT: Go ahead.

19 MS. RYAN: There was a no contact order that was  
20 authorized by the Court much earlier in this case prohibiting  
21 the defendants from contacting the victims in this case.

22 We would just ask that that order -- that the  
23 defense be reminded that order is still in effect and that  
24 applies to both direct and indirect contact.

25 THE COURT: Is that a condition of -- well, we're



1 not dealing with supervised release. I don't have any  
2 specific recollection of the tentacles to whatever I said  
3 before as to each -- I'm not going to do it now. It's now ten  
4 to 5:00. It's been a long day.

5 If there's any problems, you'll let me know and we  
6 can deal with it and the Bureau of Prisons is going to take  
7 control over his behavior now, too.

8 So I don't see that there's any need for me to say  
9 anything about that here today. Let's take five minutes and  
10 then we'll deal with Mr. Hochbaum's client.

11 (Recess from 4:46 p.m. until 4:49 p.m.)

12 THE COURT: Let's go. It's five to 5:00. It's  
13 been a long day but let's see whether we can complete all of  
14 this today if it's possible to do so.

15 Any problem ehre?

16 MS. RYAN: We're having a slight problem with the  
17 interpreter, Your Honor. There's only here right now and  
18 there's been during the course of the day a second  
19 interpreter who's been interpreting into the headphones.

20 With the Court's permission, Ms. Clancy is happy to  
21 sub in until the court interpreter --

22 THE COURT: Who would be?

23 MS. RYAN: Libia Clancy, the Spanish interpreter  
24 who was being used when the victims were speaking to the  
25 Court. It's just so that the victims can hear --

1 THE COURT: There's no reason why we should not do  
2 that, is there?

3 MS. RYAN: I don't think so, Your Honor. No, Your  
4 Honor.

5 THE COURT: I mean, we've spoke about Ms. Clancy  
6 before. I think she can come in and help us under the  
7 circumstances.

8 MS. RYAN: Thank you.

9 THE COURT: And also, Senor Musa-obregon was kind  
10 enough to act as officer of the court to tell me if there's  
11 any problem, but he didn't say anything at all. So it  
12 verifies the fact that she's doing just a perfect job.

13 MS. RYAN: That's my recollection as well. Thank  
14 you.

15 THE COURT: Mr. Hochbaum, your client is now in a  
16 better position --

17 THE INTERPRETER: Excuse me, Your Honor. May we  
18 please check out this equipment?

19 THE COURT: I don't know how to help you  
20 technically.

21 (Pause.)

22 MS. RYAN: It's working. Thank you, Judge.

23 THE COURT: All right. Mr. Hochbaum, I know it's  
24 been a long, arduous day and your client is in somewhat of a  
25 different position because he's not being characterized as an

1 organizer, just as a manager and it seems that his role, his  
2 involvement is somewhat less than the Caretta brothers.

3 So with that overture, let me ask you is there  
4 anything that remains before we proceed to sentence your  
5 client?

6 MR. HOCHBAUM: Well, Judge, in what has gone on  
7 previously with the Court's denial of the acceptance points  
8 because of the motion made, I think my client stands in a  
9 different position with regard to that than with regard to  
10 the other defendants. He certainly signed the motion, Judge,  
11 and he certainly made it with full knowledge.

12 However, the situation is substantially different  
13 to him and it deals specifically with the nature of his  
14 relationship with his prior lawyer and what was explained to  
15 him.

16 And one of the problems that my client has is, as  
17 the Court will note, his birthdate is in 1979. This  
18 conspiracy for which he pled guilty to commenced in 1991.  
19 Subsequently, upon reading the Probation Department's report,  
20 he discovers, as did I, that with regard to one of the  
21 victims who is alleged to have been forced into servitude  
22 when she was under the age of 16, at the time that that  
23 occurred, my client was 12.

24 I believe that part of the reason why he joined in  
25 the motion to withdraw his plea is he felt that he was not

1 sufficiently advised by his prior attorney with regard to the  
2 consequences of admitting involvement in a conspiracy from  
3 1991 on; that he would then subsequently get enhancements for  
4 conduct which he was neither part of the conspiracy -- was  
5 not a member of the conspiracy and certainly was probably  
6 physically incapable of participating in.

7 My conversations with him with regard to his  
8 acceptance of responsibility is that he understands that he  
9 pled guilty and he accepts his responsibility. I don't  
10 believe the existence of a pro forma technical motion to  
11 withdraw a plea would preclude the Court from giving him  
12 acceptance points.

13 There is an additional factor which I learned  
14 today, which has not been put on the record. During the  
15 substantial efforts, and I understand them to be very good  
16 hearted efforts and well meaning efforts by the prosecution  
17 to convince the defendants to plead guilty, and evidently,  
18 they were invited into the discussions by the defense  
19 attorneys, there was a suggestion but the former head of the  
20 parole division that the clients would be allowed to proffer  
21 for cooperation purposes after the entry of their plea.

22 Subsequent to the taking of the plea, a letter was  
23 sent by Mr. Alonzo indicating that that would not go forward.

24 I'm hearing this secondhand. I see Ms. Ryan shaking  
25 her head, so I'm suggesting that this is information that I

1 received, although I cannot tell you the truth of the matter.

2 I can tell you, however, Judge, that my client has  
3 accepted responsibility and has, in fact, plead guilty to  
4 crimes at least to a certain -- if one was to look  
5 specifically at the dates of the some of the specific crimes,  
6 crimes that he could not and did not commit.

7 However, he has acknowledged that he has been a  
8 participant in this conspiracy. So my first request is that  
9 the Court grant him the acceptance of responsibility points.

10 THE COURT: Ms. Ryan, I see him in somewhat of a  
11 different posture than the other defendants, but I want to  
12 give the government an opportunity. I'm open to those  
13 suggestions of Mr. Hochbaum. There seems to be some sort of  
14 basis for looking upon him a little differently than the  
15 Caretta brothers, but I want to hear from the government.

16 He wanted to accept responsibility. He had Mr.  
17 Lashley. We have a history here. We went back and forth  
18 over this -- I don't want to burden the record further, but  
19 it seems that he's been a little bit more amenable, perhaps,  
20 to cooperating. Do I have it wrong? I mean, you tell me.

21 MS. RYAN: I don't know about cooperating, Your  
22 Honor. I understand the Court's reference to the problems  
23 that the defendant raised with the Court regarding his prior  
24 representation. But the Court carefully asked this defendant  
25 about those problems --

1 THE COURT: I did.

2 MS. RYAN: -- before taking the plea. And we took  
3 special care with this defendant because of that history.

4 THE COURT: I did.

5 MS. RYAN: And the defendant said that he  
6 understood that and he withdrew all of the motions he had  
7 pending.

8 THE COURT: He accepted responsibility. And what  
9 happened since then? You said he signed his name to the  
10 elective letter. My sense is that he wasn't the ringleader  
11 there. I don't know who was.

12 MS. RYAN: I don't think there's any way for us to  
13 know without inquiring into all three defendants, Your Honor.  
14 I think this is one of the mysteries of the MDC. I really  
15 don't know who suggested this motion to them, but I don't see  
16 any real difference between this defendant and the other two.

17 They've all sprung this on the court and the  
18 government and their own lawyers on the eve of sentencing and  
19 I submit that it may be purely for delay tactics and for  
20 nothing else. And it certainly --

21 THE COURT: I'm inclined to agree that this is the  
22 antithesis of the acceptance of responsibility after the  
23 painstaking efforts the Court made over long periods of time  
24 --

25 MR. HOCHBAUM: Judge?

1 THE COURT: -- to assure that, you know, they  
2 understood that this plea really was going to stick and that  
3 we were treating it with that type of seriousness and purpose  
4 and you're quite right.

5 I took particular pains in light of the history of  
6 Mr. Lashley. I was tough with Mr. Lashley at times also and  
7 I said things to Mr. Lashley; I want to make my best efforts  
8 to make sure I will not have to deal with any corroborative  
9 matters if your client goes forward and pleads in light of  
10 the fact that he's protesting continuously about your legal  
11 representation and we went on to say having this colloquy  
12 this morning -- I'm talking to pages 12 and 13 of the plea  
13 proceedings back on April 5th, 2005 and said it would make it  
14 less probable and more probable that I have to deal with  
15 2255 collateral attacks.

16 Out of the process of argument, he said you didn't  
17 properly advise him, that he wasn't being effective counsel.  
18 I think it is important for us to engage in these  
19 prophylactic measures at this particular time and I wanted to  
20 hear from Mr. Lashley in light of the fact that his client  
21 expressed displeasure in his representation in the past.

22 I said that I will speak to him about that  
23 extensively and in light of the fact that now, contrary to  
24 what he said on prior occasions, he's willing to plead to the  
25 entire indictment, strikes me that we have to be very

1 cautious about understanding the exact events transpired --  
2 transpired in the court.

3 And then we went on from that point forward and  
4 then Mr. Lashley said that he feels that in light of *FanFan*  
5 and *Booker*, he thinks his best interests would be to avoid  
6 facing the possibility of life in jail and to view with all  
7 these matters in sentencing and we go on and on from that  
8 point forward to make it clear that Mr. Alonso was satisfied  
9 with his counsel.

10 MR. HOCHBAUM: Judge?

11 MS. RYAN: Judge, and --

12 MR. HOCHBAUM: If I might? It seems to me that the  
13 focus on whether or not my client makes a motion after taking  
14 his plea to withdraw his plea -- a motion that has very  
15 little basis.

16 THE COURT: I'm saying it's the basis of the motion  
17 that really concerns me, you see?

18 MR. HOCHBAUM: I understand that, Judge. But also,  
19 it's clear in the subsection involving acceptance of  
20 responsibility that the major concern is the obviation of the  
21 need for the people to try the case. Okay? And that has  
22 happened.

23 THE COURT: Right. And I appreciate that. But,  
24 you know, I just want to make it clear. It's not that I'm  
25 saying that because somebody makes a motion that that



1 automatically withdraw his plea -- that that automatically  
2 means he is no longer a candidate for acceptance of  
3 responsibility.

4 It's the substance and the nature of the motion. I  
5 read through those three pages, you see? And those three  
6 pages really tell the court that he just doesn't accept  
7 responsibility. That's what I'm referring to.

8 And the three pages are that infamous letter, I  
9 guess we can say, jointly signed by the three defendants.  
10 It's not just the one paragraph -- please, I've had a change  
11 of heart or my lawyer didn't properly advise me and this or  
12 that.

13 I know you're faced with a tough cup of tea now.  
14 But what should be clear is the substance of the reason why  
15 as he sets forth in that letter he wants to change his plea  
16 that, you know, I think motivates me to treat him the same as  
17 the other defendants by not giving him acceptance of  
18 responsibility.

19 And I think in fact for consistency purposes and  
20 without elaboration, I just am not going to go along with  
21 giving him acceptance of responsibility. So let's go  
22 forward--

23 MR. HOCHBAUM: Well, Judge, I mean if -- as long as  
24 we're making reference to the three pages, paragraph 3 of the  
25 letter says, "It is those Rule 11 errors and counsel's

1 ineffectiveness that formed the basis for the motion to  
2 withdraw the guilty plea and appoint new counsel."

3 THE COURT: Let's stop.

4 MR. HOCHBAUM: Okay?

5 THE COURT: Look at the Rule 11 errors that's  
6 eluded to. That I did not advise the defendant or defendants  
7 they have a right to testify in their own behalf. That's  
8 just wrong.

9 I mean, you know, it's as clear as anything that I  
10 gave that specific advice. This is the basis for his wanting  
11 to withdraw his guilty plea?

12 MR. HOCHBAUM: Which makes me wonder whether or not  
13 one could look at this motion --

14 THE COURT: And take it seriously?

15 MR. HOCHBAUM: -- on its face in light of the  
16 transcript that says that that's a suggestion and he doesn't  
17 accept responsibility.

18 Okay? It seems to me that when you plead guilty  
19 and you say it 27 times, that's a heck of a lot more  
20 forthcoming and strong evidence of your acceptance of  
21 responsibility than a, you know, two-and-a-half page letter  
22 that says --

23 THE COURT: The client sends me a letter that says  
24 it's absolutely -- you know, saying that the Court, you know,  
25 did not properly advise him.

1 MR. HOCHBAUM: But it doesn't say, Judge, in the  
2 letter that I'm not guilty. Nowhere does those words come  
3 in. Nowhere does it say I didn't do these crimes. It simply  
4 said there were procedural errors. I didn't get appropriate  
5 advice and I feel that I'm entitled, as well as this new  
6 information that seems to be exculpatory in some nature, that  
7 I'm entitled to have my plea back.

8 THE COURT: You've been directed. I'm not going to  
9 give him acceptance of responsibility. I don't want to  
10 burden the record any further but you simply stated -- how  
11 you made it, cogent reasons why I should reconsider that I'm  
12 inclined to do so.

13 Okay. Let's move on in a more structured way at  
14 this time. We had the presentence report. Let me tell you  
15 what I have in the file. And I think it should be understood  
16 that everything that I've said that's relevant in the prior  
17 sentences should be re-incorporated herein.

18 I just thought as an afterthought in that respect  
19 that while with Gerardo Carreto I was very explicit about why  
20 I chose that particular sentence, considering that it was 24  
21 months in excess of the advisory range on the low level. I  
22 didn't specifically say that in respect to a sway, but I did  
23 incorporate my comments that I made and that's certainly, I  
24 hope --

25 MR. HOCHBAUM: Judge, I will --

1 THE COURT: -- I assume is implicit, but it does  
2 not mean explicitly the same reasons why I chose the 600  
3 months for Gerardo also of course pertain to --

4 MR. HOCHBAUM: Judge, as we know --

5 THE COURT: -- let me finish so that we have a  
6 clear record. Also pertains to Josue. But that doesn't deal  
7 with Josue. Is that how you pronounce his name?

8 MR. HOCHBAUM: Josue.

9 THE COURT: Josue.

10 MR. HOCHBAUM: Josue.

11 THE COURT: All right. So I made that clear.  
12 Let's go on and tell you what I have in my sentence file.

13 The transcript, of course, is being incorporated of  
14 April 5th, 2005. The government's letter of April 26th,  
15 2006, to the extent that it addresses your client's concerns,  
16 is -- is identified in that it will be part of the file.

17 The presentence report, we've referred to that, of  
18 course. That's dated December 15th, 2005. There's an  
19 addendum to the presentence report in this particular case  
20 and that deals with his exceptions to the fact that he has  
21 been characterized as a manager and that's dated February 9,  
22 2006.

23 Of course, I have what I refer to as the infamous  
24 letter of April 24th, 2006 which we just have spoken about.  
25 And the recommendation by the Probation Department. You

1 folks have it, I assume? The comments are basically the same  
2 as with the brothers -- a little different.

3 And the recommendation here on Counts 2 through 6  
4 is 30 years concurrent and 7 through 27, five years  
5 concurrent with everything.

6 What else should I have here? Let me take a look  
7 at my -- yes. Yes. I have Mr. Hapgar's letter of April  
8 20th, 2006 talking about guidelines sentencing matters.

9 I have the, of course, notice of motion to allow  
10 him to withdraw his plea and there is this declaration that  
11 has six paragraphs in it. That's dated April 24th, 2006.

12 And therein, amongst other things, he refers in  
13 paragraph 4 the Rule 11(b)(1)(e) which requires the Court  
14 before accepting the plea of guilty to inform the defendant  
15 of his right to testify and then Mr. Alonso is just wrong.  
16 He's saying that the court did not do that.

17 And also in terms of the issue of whether or not I  
18 properly inquired as to whether or not the guilty plea was  
19 one which did not have any promises associated with it in  
20 terms of sentencing or otherwise. We fleshed it out very  
21 carefully, and also another example of he just seems to want  
22 to not accept responsibility.

23 MR. HOCHBAUM: Well, Judge, in light of that, I  
24 would bring to the Court's attention this information that I  
25 was given today about some suggestions made by the former

1 chief of the Criminal Division to the defendants with regard  
2 to potential Rule 35 motions or later on in the process. Not  
3 being present, I don't know. I know there is a letter in the  
4 file from Mr. Alonso. That would be Gerardo Alonso, the  
5 former chief, indicating that they were not considering the  
6 subsequent cooperation of the defendants.

7 It appears to me that such a letter that occurs  
8 after the plea would not be necessary unless, in fact, there  
9 were some at least suggestions made prior thereto that that  
10 was something that would be considered.

11 Now, I don't suggest that the government promised  
12 that they would do it, nor am I suggesting that Mr. Alonso  
13 did not have the full power to say to them, we'll take that  
14 under consideration and make a determination --

15 THE COURT: Let me just finish.

16 MR. HOCHBAUM: -- which, I'm sure, is what he did.

17 THE COURT: Okay.

18 MR. HOCHBAUM: However, when my defendant, who's  
19 fairly uneducated, has problems with his lawyers and deals in  
20 another language, then presents a motion which indicates  
21 whether or not -- or questions whether or not -- promises  
22 were made, it seems to me that the court should not take the  
23 pro forma approach that since he wants to withdraw his plea,  
24 he shouldn't get acceptance of responsibility.

25 Certainly, the acceptance of responsibility statute

1 or guideline contemplates defendants getting acceptance of  
2 responsibility after trial.

3 THE COURT: But there's more than that in the  
4 declaration and there's more than that in the three- or four-  
5 page letter. I don't want to go over it any further. It's  
6 just the totality of all these factors and circumstances  
7 which I've considered.

8 Lest I forget, let me tell you what else I have in  
9 the file. I have Mr. Lashley's letter of February 15th,  
10 2006. I have a typewritten letter from the defendant Alonso  
11 which was filed on February 9th, 2006. I have certificates.  
12 I also see that he's attended Bible class. And I have  
13 certificates about that as well.

14 And I have another letter from Mr. Lashley dated  
15 February 10th, 2006 and attached to that letter are all these  
16 certificates about Bible school. I'll let you see that.

17 I have this letter from Mr. Alonso dated -- that  
18 was filed February 6th, 2006. It talks about harsher  
19 incarceration and other factors for me to consider in terms  
20 of sentencing. It talks about post-offense and  
21 rehabilitation. He does seem to have something to say for  
22 himself in terms of his turning to the Bible, which is good  
23 to see.

24 And that's basically -- well, I have a letter from  
25 Mr. Lashley also of January 9th of 2006 talking about *Booker*,

1       *FanFan.*

2                   And that's what I have in the file. So I just  
3       don't want to lose track. I also have the sentencing sheet  
4       that went along with the sentence -- the plea -- back in  
5       April of 2005. I just want to make sure that I have the  
6       complete file. Is there anything that's missing?

7                   MR. HOCHBAUM: Not that I'm aware of, Judge.

8                   MS. RYAN: No.

9                   THE COURT: Let's make our calculations, then. Let  
10       us see how this gentleman fares.

11                  MR. HOCHBAUM: It's just -- before we go through  
12       that, one of the issues that was addressed by Mr. Lashley and  
13       my client and myself was his role as manager.

14                  Now, while I understand that somewhat unusually  
15       there were allocutions at the time of the plea to sentencing  
16       enhancements, my client has consistently maintained that he  
17       was not a manager and I think that the facts as set forth in  
18       the presentence report do not indicate that he was a manager.

19                  THE COURT: But tell me this, though. Why did he  
20       say so during his allocution? Okay? Am I supposed to just  
21       ignore what people tell me?

22                  MR. HOCHBAUM: No, Judge. But you are supposed to  
23       understand the process here. And the process here was on the  
24       eve of trial, everybody is to take a plea and the  
25       government's saying the only plea we'll include you're



1 allocuting about sentence enhancements. See -- you know, we  
2 can't divorce ourselves from that process. Now, I'm not  
3 suggesting that there's anything wrong with what the  
4 government did.

5 THE COURT: Let's hear this. There's a lot of  
6 pressure at the eve of the trial and this defendant did say  
7 that he was a manager.

8 Now, I guess the Court -- you know, looking at the  
9 facts, maybe not impose that type of enhancement on him, not  
10 withstanding the fact that he said that. Because there is  
11 some reality to what Mr. Hochbaum said considering the  
12 pressures of the moment and things of that nature, but I'd  
13 like to hear from the government.

14 Did Mr. Alonso really actively involve himself in  
15 these criminal activities as a manager in all of that?

16 MS. RYAN: Yes, he did, Your Honor. And the  
17 government's position is that these defendants pled guilty to  
18 what they actually did.

19 THE COURT: There's no question he has that to deal  
20 with. But I just want in fairness to the process -- you can  
21 explain. I think there's sufficient here for me to feel  
22 comfortable, separate and apart from the fact that he  
23 allocuted that he, indeed, had managerial responsibilities  
24 under the guidelines.

25 MS. RYAN: Yes, Your Honor. I tried to address

1       that in the letter that we filed yesterday with respect to  
2       his managerial role.

3               This defendant was tasked with various things  
4       during his time that he spent working with his co-defendants.  
5       Some of those tasks included watching over multiple women at  
6       the same time.

7               He shared an apartment with Josue Flores Carreto  
8       and one of his victims and was often left in charge of the  
9       women there, was in charge of taking them to and from the  
10      brothels where they worked.

11              THE COURT: But how do we know that? I know he  
12      tried. But how do we know that?

13              MS. RYAN: That's contained in the presentence  
14      report, Your Honor, and I tried to cite to that as much as I  
15      could in my letter.

16              We're at a disadvantage here somewhat, Your Honor.  
17      We have all these factual disputes going on when we did not,  
18      in fact, actually have a trial. I am confident all of this  
19      evidence would have come to light at that trial.

20              MR. HOCHBAUM: The question is, Judge, whether or  
21      not the factual evidence -- I mean if we want to say it's  
22      from the probation court, that's kind of ridiculous because  
23      it's from the government. The Probation Department does not  
24      do an independent analysis or an independent investigation.  
25      But let's hear what they have to say.

1 THE COURT: What if you decided to plead this?  
2 Would you be prepared to go forward if I thought that the  
3 hearing would be appropriate to show what his role was? You  
4 have people who could testify?

5 MS. RYAN: I do have people who would testify. I  
6 don't know who would be able to go forward right now, Your  
7 Honor.

8 THE COURT: No. No. I'm not suggesting you don't,  
9 but if Mr. Hochbaum really thinks that his client was just a  
10 kind of like a peripheral player here, he wouldn't have  
11 accepted 27 counts, that he's not a manager, do you wish to  
12 have a hearing on that issue?

13 MR. HOCHBAUM: Judge, I do, but I don't want the  
14 Court to misunderstand me. I'm not suggesting my client was  
15 a peripheral player.

16 That's not -- the statute requiring organization or  
17 management requires that he organizes or manages five or more  
18 participants. So far I've seen that there are four  
19 participants in this crime. And the victims are not  
20 participants.

21 THE COURT: And that also includes himself.

22 MR. HOCHBAUM: I understand that, Judge. Him, the  
23 two co-defendants, the manager of the brothel. The victims  
24 are not considered participants. All right? So now we have  
25 to get into the area of whether or not this was otherwise an

1 extensive venture. I don't doubt it.

2 But listen to what they've said. They've said he  
3 was directed to go pick people up. He was directed to go  
4 stay in the apartment while everybody else went about their  
5 business. It's hard to understand how that puts him in a  
6 managerial role. Okay?

7 And I think the Court misunderstands me when I  
8 suggested he's not a manager. I'm not suggesting he's  
9 peripheral. He's actively involved, but we have to  
10 understand the nature of his involvement.

11 We have a case in which there is an allegation that  
12 there are 50 victims. Then with regards specifically to my  
13 client, the allegation is one person who gives a statement  
14 and that the government has information about five others and  
15 then we had a statement by Gloria A. in which she says,  
16 essentially, that my client asked her to be a prostitute.

17 THE COURT: You're very eloquent. I'm not so sure  
18 I agree, but, of course, you may be right, that just by the  
19 fact that somebody's a victim that means that the defendant  
20 was not involved with managing that person's conduct, because  
21 that person was engaged in prostitution.

22 MR. HOCHBAUM: I understand that but, Judge, the  
23 statute is clear. The section is clear. You cannot manage a  
24 non-participant. You are not a participant if you're a  
25 victim.

1 THE COURT: You know, you talk very rapidly.

2 MS. RYAN: Your Honor --

3 THE COURT: But that doesn't mean that everything  
4 you say I agree with even though I respect you.

5 MR. HOCHBAUM: I understand that.

6 THE COURT: I don't think you're correct. I think  
7 you can be a person who is involved in criminal behavior even  
8 though you've been a victim. That these women were still  
9 involved in prostitution and he was involved in you know,  
10 that whole process.

11 MS. RYAN: Your Honor?

12 THE COURT: Yes. Now, you have something there,  
13 Ms. Ryan?

14 MS. RYAN: Yes. If we're going to talk about what  
15 it means to be a manager, let's actually talk about the  
16 language that's in the guidelines.

17 THE COURT: Right.

18 MS. RYAN: That says, if defendant was a manager or  
19 supervisor but not an organizer and the criminal activity  
20 involved five or more participants, or was otherwise  
21 extensive.

22 The five or more participants we're talking about  
23 here -- the defendant was charged in the indictment -- I  
24 think there were five or six other people charged in the  
25 indictment with him as members of this conspiracy. And I'm

1       confident that I --

2               THE COURT: And we have the person I sentenced?  
3       The co-defendant I sentenced before, too?

4               MS. RYAN: We have her and she's not named in that  
5       particular indictment. She's charged in a separate one.

6               THE COURT: And in the indictment, it names all  
7       these people. He pled to the indictment.

8               MS. RYAN: I'm sorry. I didn't hear you.

9               THE COURT: In the indictment, he names more than  
10      five people.

11              MS. RYAN: Yes.

12              THE COURT: Separate and apart from the victims.

13              MS. RYAN: Yes. I'm talking about criminal  
14      participants in the charged conspiracy that this defendant  
15      pled guilty. They're named in the indictment.

16              THE COURT: And he also said --

17              MS. RYAN: And there are certainly more than five.

18              THE COURT: And he agreed he was the manager? We  
19      went carefully with Mr. Lashley in which the defendant --  
20      that he understood that he was being given proper legal  
21      representation? He said yes.

22              We went through that so carefully and I can't ask  
23      him in the context of making that inquiry, were you told  
24      specifically about every single thing about being the  
25      manager, about being this, about being that. It's not what

1 we do and it's not realistic.

2 We have to accept the fact that he testifies under  
3 oath, that he was properly advised of his counsel and  
4 properly advised of his legal rights. And he said that in  
5 glowing technicolor. I've heard your arguments. Mr.  
6 Hochbaum, why don't --

7 MR. HOCHBAUM: Judge, I'm not looking to repeat my  
8 arguments.

9 THE COURT: I know. And why don't we do it in the  
10 context of making our sentencing calculations?

11 MR. HOCHBAUM: Well, I thought that's what I was  
12 doing, Judge.

13 THE COURT: But I haven't even gotten to it.

14 MR. HOCHBAUM: Well, every sentencing calculation  
15 with regard to this adds three points for a managerial role.  
16 If you want me to object specifically each time, then I'll do  
17 it that way.

18 THE COURT: You were listening to me all day. You  
19 know there's some need for structured organization to get  
20 through these types of proceedings.

21 MR. HOCHBAUM: Absolutely, Judge.

22 THE COURT: I don't think you've been involved with  
23 27 counts before, have you?

24 MR. HOCHBAUM: I've been involved with 27  
25 defendants, but that's not to say 27 counts.

1 THE COURT: So you could appreciate it takes some  
2 effort for the court to organize this. Otherwise, we'll be  
3 talking and talking all around the place, right?

4 So I try to do that by going through Count 1 and  
5 the others and giving the lawyers, you've heard, the  
6 opportunity to talk about all of these issues about how we  
7 made our calculations.

8 And can you do the same thing with me? You're  
9 putting the cart before the horse and it makes it difficult  
10 for me to keep a structure. Okay? Very good.

11 So Count 1 on page 33, Act A, has a base offense  
12 level of 27 and as I go through these things, then we can  
13 make a final determination with respect to some of these  
14 arguments you've already made. Okay?

15 Then on paragraph 96, we have the use of physical  
16 force and threat. Now, look. I don't want to re-visit every  
17 aspect of his plea allocution.

18 MR. HOCHBAUM: Right.

19 THE COURT: He pled to that.

20 MR. HOCHBAUM: I understand that.

21 THE COURT: So that's four points. And then we  
22 have the vulnerable victims. And you know the same thing I  
23 said about these victims in the first proceeding today with  
24 Gerardo and that's incorporated herein and as well. All  
25 right? So I'm giving that to the uptake and --



1 MR. HOCHBAUM: Now, we're at a point, Judge --

2 THE COURT: -- then we have the point you made. So  
3 it's --

4 MR. HOCHBAUM: Let the record reflect that I'm  
5 objecting to the adjustment for the role in the offense under  
6 Count 1.

7 THE COURT: I think that the alternative is I can  
8 give two levels instead of three if I found that there was  
9 some issue -- what does the --

10 MR. HOCHBAUM: That is correct.

11 THE COURT: -- guideline say specifically about  
12 that?

13 MR. HOCHBAUM: The guidelines specifically allow  
14 you to do that, Judge.

15 THE COURT: Read the --

16 MS. RYAN: 3-2-1.1

17 THE COURT: Yes. Let me just take a look at that.  
18 I'm glad I got a good night's sleep last night. 3(b)1.1.  
19 The defendant was an organizer, neither a manager or a  
20 supervisor in any criminal activity other than described in  
21 (a) or (b).

22 Well, you know, I'm going to give him the benefit  
23 of that. The government may have a good basis for getting it  
24 reversed, but I think under all of the circumstances and Mr.  
25 Hochbaum's eloquent exposition, that two levels is what I'm

1 more comfortable with. And so that means he gets an adjusted  
2 offense level of 35 and 36.

3 I'm going to keep track of all of this here so we  
4 make our proper calculations when we get to the multiple  
5 count.

6 Next we have Count 1, Act B. And here we're going  
7 to have the same 35. Right?

8 MS. RYAN: Yes.

9 MR. HOCHBAUM: That is correct with the same  
10 objections noted, Judge.

11 THE COURT: 35. Now Count 1, Act 3 will be once  
12 again the same 35.

13 MR. HOCHBAUM: Again, Judge, the record is clear.  
14 I'm objecting to the --

15 THE COURT: Well, you'll have a continuing  
16 objection with me giving him two points, right?

17 MR. HOCHBAUM: Right.

18 THE COURT: But if that issue is flushed out on  
19 appeal, there will be that the Circuit Court would say that  
20 he should have gotten three points, but I'm not going to deal  
21 with that right now.

22 MR. HOCHBAUM: I understand.

23 THE COURT: Okay? So that the government would  
24 have an argument, I'm thinking, right?

25 MS. RYAN: Thank you.

1 THE COURT: Count 1, Act D, once again we have 35.  
2 Now we come to Act E, Jane Doe number 5 and here we'll have  
3 the two-level adjustment for the role and we can eliminate  
4 the 16 for the purposes of consistency. And so we will then  
5 have 35. Is that correct, also?

6 MS. RYAN: Yes.

7 THE COURT: Okay. Another 35. Now Count 1, Act F  
8 will have 35. And Act G, once again, 35. Count 1, Act H --  
9 let's see what kind of adjustments we are going to make.  
10 We're not going to hold him accountable for the scarring and  
11 once again, two full adjustment --

12 THE INTERPRETER: I'm sorry. Your Honor, could you  
13 repeat what he is not being accountable for?

14 THE COURT: On Act H -- my voice is fading, so I  
15 don't mind you telling me to do this. It's been a long day.  
16 Act H, we're not going to hold him accountable for the  
17 scarring. And of course, once again, two levels instead of  
18 three for adjustment for role in the offense. So that means  
19 we're at 35 again. 35 seems to be where we're coming out by  
20 and large here.

21 MS. RYAN: Yes.

22 THE COURT: Now Count 1, Act I -- it will be 29.  
23 Okay? Hear any objections? Count 7 would be I guess 37  
24 there. Am I missing something? Yes. Because you get the  
25 two levels for the 2H4.1(b)(4)(B).

1 MS. RYAN: Correct.

2 THE COURT: So there's 37. So that's the high  
3 water mark so far. Count 8, we're at 37 again. Right?

4 MS. RYAN: Yes.

5 THE COURT: Count 9, once again 37. Right? Count  
6 10, 37. Count 15, Act A is 35. Right?

7 MS. RYAN: That is correct.

8 THE COURT: Count 15, Act B will once again be 35.  
9 Act C will be once again 35. Act D, 35. And Act E will be  
10 adjusted by eliminating the 16-year age one and the  
11 adjustment for the response for role is two so that would  
12 leave 35. Right? Another 35. And Act F will be 35. Act G  
13 will be 35. Act H will be 35 because we're eliminating the  
14 permanent scarring in paragraph 225 as well once again of  
15 change in the adjustment for role for two points instead of  
16 three now. The earlier smuggling ones will carry an adjusted  
17 offense level of 19 instead of 20.

18 So there we are and our multiple counts adjustment  
19 will reflect all of that and doesn't change the total number  
20 of units --

21 MR. HOCHBAUM: Right.

22 THE COURT: -- unless I inadvertently make a  
23 mistake or I don't think that's affected. Do you agree?

24 MS. RYAN: I agree.

25 MR. HOCHBAUM: I agree, Judge.

1 THE COURT: The greater of the adjusted offense  
2 levels here is thirty --

3 MR. HOCHBAUM: Seven, Judge.

4 THE COURT: -- seven and with five added for the  
5 multiple counts, we got a 42. Now, that comes out to the  
6 same as the other defendants' that we made a mistake. If we  
7 did not make a mistake, then they would be facing advisory  
8 guideline range of life and here it's 360 to life.

9 I'll take this into consideration in terms of  
10 washing it out under the standards of reasonableness being  
11 mindful of the need not to sentence defendants who may not be  
12 similarly situated the same. We want to reflect the  
13 difference in these different postures of the defendants, so  
14 to speak. So we'll take it under consideration.

15 So now we're not giving acceptance of  
16 responsibility and Mr. Hochbaum, what do you say about your  
17 client?

18 MR. HOCHBAUM: Judge, I'm constrained to remind the  
19 court that it's my position that I go last. So I would  
20 expect the prosecution to make a statement and if any victims  
21 are to be called, I would expect them to happen.

22 THE COURT: Well, are there any victims that want  
23 to come forward at this time?

24 MS. RYAN: I'll check.

25 THE COURT: Do that now and I'll be right back

1 while you do that.

2 (Pause.)

3 THE COURT: Yes. Anybody wish to come forward?

4 MS. RYAN: Yes, Your Honor.

5 THE COURT: Who do we have here?

6 MS. GARCIA: My name is Virginia Garcia.

7 THE COURT: All right. And you want to speak to me  
8 under oath or not under oath? The choice is yours.

9 MS. GARCIA: Under oath.

10 THE COURT: All right. Then the clerk of the court  
11 will administer an oath.

12 (Virginia Garcia is sworn.)

13 THE COURT: Bear in mind that since you're now  
14 speaking to me under oath and if you don't tell me the truth,  
15 you could be subject to prosecution for perjury or for  
16 rendering a false statement under oath. Okay. Go ahead.  
17 What do you want to say?

18 MS. GARCIA: What I want to say is that that man  
19 hurt me very badly and because of him, I abandoned my parents  
20 and then after that, he put me to work in prostitution and he  
21 would say things. He would not allow me to speak to my  
22 parents when we got here. He would say that they should not  
23 find out where I was at. And he would not allow me to send  
24 money to my parents, nothing like that.

25 THE COURT: Anything else?

1 MS. GARCIA: Yes. And then later on, when I was  
2 going to work, he would get extremely angry when I came back  
3 without any money. That's it.

4 THE COURT: All right. Thank you. Is there anyone  
5 else, Ms. Ryan?

6 MS. RYAN: Let me check.

7 (Pause.)

8 MS. RYAN: No one else, Your Honor.

9 THE COURT: Now let me ask you, Ms. Ryan, a few  
10 questions before Mr. Hochbaum speaks again. I want to give  
11 him the chance to catch his breath, okay?

12 MR. HOCHBAUM: I don't need that, Judge.

13 THE COURT: This young man is 26 years -- at least  
14 -- well, he's more than 26 years. Well, not much more. A  
15 couple of months.

16 But Mr. Hochbaum points out that in terms of the  
17 time span in the conspiracy, he was just 12 years old at the  
18 time that this conspiracy commenced. He pled guilty to it,  
19 but you know, I try to look at the individual circumstances  
20 of each defendant.

21 It seems that in his circumstances, personal  
22 circumstances might be different, let alone the difference in  
23 his role than the other two folks that I sentenced today.

24 So I might feel the need, you know, not to hang  
25 disparate sentencing for those who are similarly situated and

1 by deductive reasoning, those who were not similarly  
2 situated, that should be reflected in the court's sentence.

3 And given his age and the fact that he could not  
4 have done all of these things that the older people were  
5 around to do, it seems to strike a responsive chord with the  
6 Court when I look that he was just a young fellow when this  
7 conspiracy was hatched and he obviously was not part of  
8 (indiscernible), I guess. What do you have to say about  
9 that?

10 MS. RYAN: Well, Your Honor, we disagree with the  
11 math, but I will say that when he joined this conspiracy, he  
12 was a very willing and active participant. And I think  
13 that's something the Court needs to consider.

14 THE COURT: I will. But once again, but he  
15 certainly wasn't involved throughout the length of the  
16 conspiracy as perhaps the others were.

17 MS. RYAN: That is perhaps true, but I will point  
18 out to the court that the majority of the victims who have  
19 spoken in court today and were victims of the conspiracy  
20 later than 1991 and you can tell from their own ages which  
21 are -- they're younger than this defendant. Even though they  
22 were very young when they were being coerced into  
23 prostitution. If he was 12 at the time, then these women  
24 have not yet been victimized by the defendant.

25 THE COURT: Okay. I just wanted to flesh that out



1 especially since Mr. Hochbaum raises the issue. Anything  
2 else the defendant wishes to add here?

3 I'm looking at Mr. Alonso in somewhat of a  
4 different light because I don't think his role was quite the  
5 same as the others. And that's consistent with the fact that  
6 he was much younger and more likely to have been taking  
7 directions rather than to have been giving directions. I  
8 consider that to be a significant difference.

9 MS. RYAN: We he was certainly taking directions  
10 from his co-defendants who were more senior and more  
11 experienced at this line of work, but he was coming on --

12 THE COURT: He was getting up there, right?

13 MS. RYAN: He certainly was.

14 THE COURT: He was a potential organizer of  
15 meetings?

16 MS. RYAN: That's our position, Judge. He was  
17 living with (indiscernible) and watching him work and working  
18 out --

19 THE COURT: He was learning the trade?

20 MS. RYAN: He was. And he was not just learning  
21 it. This went on for a number of years. The government's  
22 information is that he was learning it since 1999.

23 THE COURT: I understand. But you know, now also,  
24 unlike the others, there's a touch of rehabilitation. He  
25 does seem to have turned to The Bible. Sometimes these

1 things may be disingenuous. Sometimes they could be for the  
2 purposes of putting him in a favored light. But at least  
3 he's made an effort. We have the certificates. The Court's  
4 somewhat impressed by that. What does the government say  
5 about that circumstance?

6 MS. RYAN: I know no reason to doubt that the  
7 certificates that are issued by these groups that operated in  
8 jail are --

9 THE COURT: They seem to be genuine?

10 MS. RYAN: And on that, Your Honor --

11 THE COURT: In a young man, there's some hope for  
12 some redemption somewhere down the line if he chose to. In  
13 the words of the law, then there's some possibility that  
14 maybe if he gets out so he gets a little bit of a life  
15 outside of jail, he may have the ability in himself, he could  
16 process. Just considering all of the circumstances that  
17 might happen.

18 MS. RYAN: That's certainly the Court's job here.  
19 My job, Your Honor, is to stand and choose -- to let the  
20 society who's offended by the conduct of this defendant and  
21 to stand up and fight for the victims --

22 THE COURT: That's part of your job and, obviously,  
23 we're not treating this matter lightly. I'm sure that you  
24 realize that.

25 Nonetheless, I have an overriding responsibility to

1       also speak in terms of special calling that the government  
2       has to notice it as to what's in the interest of justice and  
3       weigh all of these special responsibilities. So that's why  
4       I'd like you to interact with me about matters like this and  
5       to find out whether there's a legitimacy to and something  
6       which the government thinks is worthy of consideration.

7               MS. RYAN: I'll leave the Court to determine what  
8       weight to give this information. Obviously, the seriousness  
9       of these crimes are, as the court would point out --

10              THE COURT: I pointed out those two facts because  
11       the seem to represent at least two situations that place a  
12       little bit of additional posture on the co-defendants. Well,  
13       three actually. That he was not a leader or an organizer. I  
14       know we argued about manager. There's age and the fact that  
15       he has made an effort to embrace the Scriptures. Anything  
16       else, Mr. Hochbaum, I should consider?

17              MR. HOCHBAUM: I have several things to say, yes.

18              THE COURT: Have I articulated these three to your  
19       satisfaction?

20              MR. HOCHBAUM: Certainly, Judge. And I think that  
21       the most important thing is -- one of the most important  
22       things is to note what Ms. Ryan said. That my client's  
23       involvement in the conspiracy operated yet in 1999.

24              We had a conspiracy that went for 13 to 14 years,  
25       three-quarters of it, my client was not involved in.

1 THE COURT: But the victims, though, came along  
2 later on.

3 MR. HOCHBAUM: Judge, these victims came along  
4 later on. Okay? I understand that.

5 THE COURT: There may have been obviously others  
6 early on which puts him a different category than the others.

7 MR. HOCHBAUM: That is correct, Judge.

8 THE COURT: I think that probably sounds logical.

9 MR. HOCHBAUM: In fact, though, I would undertake  
10 some exception to the determination that simply because my  
11 client was living with one of the Carreto brothers, that that  
12 meant he was an organizer-in-training.

13 I don't think that that necessarily follows. And  
14 in fact, while I don't think that it's necessarily wholly  
15 appropriate to deal with the victim impact statements, one of  
16 the things that occurred to me in looking at the victim  
17 impact statement of Gloria A. in the probation report who was  
18 the -- worked at the billiards parlor where they worked at,  
19 indicated that my --

20 MS. RYAN: They didn't work at the billiards  
21 parlor.

22 MR. HOCHBAUM: No. No. Where they hung out.  
23 Excuse me. She worked at the billiard parlor. They hung  
24 out. And he, in fact, attempt -- she had been involved in  
25 this type of activity before, through someone else. Through

1 a completely different organization and my client asked her  
2 to work for him.

3 Now she makes some assumptions about what might  
4 have happened if he didn't get arrested, but what is clear,  
5 Judge, is that he never exerted the kind of pressure on her.  
6 Now maybe because we're in America and she was much older,  
7 but he simply asked her a number of times to work in the  
8 prostitution business for him. She then makes an assumption  
9 that if he hadn't been arrested, other things would have  
10 happened.

11 You know, I don't think that that assumption  
12 necessarily follows. And I only bring it up not to denigrate  
13 any of the victims in any way. Not to suggest that he wasn't  
14 involved in this activity. But when the Court says  
15 organizer-in-training because lived with them, it's certainly  
16 clear based upon his contact with Gloria A. that he didn't  
17 learn the trade the way he should have been learning it.

18 I don't mean to make light of it, Judge. What I  
19 mean to suggest is we've got a situation in which there is a  
20 claim that there are more than 50 victims.

21 THE COURT: Well, I said already that I'm not  
22 necessarily accepting that. Because I'm not accepting that.

23 MR. HOCHBAUM: Well, I'm willing to accept it,  
24 Judge, for the purposes of argument. But my client,  
25 according to the government and the presentence report, have

1 one particular victim -- in fact there were two.

2 He said there were two or three others in Mexico  
3 and the government's information is that there were five  
4 others that he was involved in. That's what the probation  
5 report suggested, and I presume that that information came  
6 from the government. I don't imagine that they don't have  
7 some other ways of getting that information.

8 MS. RYAN: Actually, Your Honor, in this case  
9 unusually, we did. We had the defendant's own letters that  
10 he was writing from the jail where he admitted that he was  
11 involved in this kind of activity. He admitted that this was  
12 his job and he admitted that he had other women in Mexico who  
13 had done this so the proof came from the defendant himself.

14 MR. HOCHBAUM: Well, whatever it may be, it's still  
15 limited to a much smaller percentage of the victims.

16 THE COURT: I think you made that point.

17 MR. HOCHBAUM: Okay.

18 THE COURT: Go ahead.

19 MR. HOCHBAUM: The other issue, Judge, and it's a  
20 difficult issue for me because of how I want to present  
21 myself with regard to other members of the Bar, but it's  
22 certainly clear that there were significant problems that  
23 occurred between the defendant and Mr. Lashley, his prior  
24 counsel.

25 And one of the most important things that I learned

1 in reviewing the file here was the significant amount of plea  
2 negotiations that went on and I would suggest, on the  
3 government's part, seemed to have gone far beyond what would  
4 normally be expected. Numerous plea offers were made.

5 And it seems to me that when we are in the  
6 situation that exists now in the Federal courts after *Booker*,  
7 we cannot divorce ourselves from the plea bargaining process  
8 and simply rely on the artificial guideline calculations.

9 Now while I know that the government arguments in  
10 its letter and that the court should accept the advisory  
11 guidelines, it's certainly clear that if my client had pled  
12 guilty to a plea agreement in which he was offered 151  
13 months, that the government would not have stood up at that  
14 point and said, wait a minute, Judge. That's an unreasonable  
15 sentence. He should be getting more.

16 So while I understand that the government has to  
17 take the posture that, you know, plea negotiations go on and  
18 once they fall apart, you plead to the indictment and you  
19 deal with having plead guilty to 27 counts, it seems to me  
20 that the Supreme Court has told us that that formalistic  
21 approach should not exist anymore.

22 That when the court -- and what I include in my  
23 letter is the filing that I believe is appropriate -- that  
24 when a court sentences a defendant within the guideline range  
25 without looking at other factors to make a determination as

1 to what's a reasonable sentence, it is in fact in violation  
2 of *Booker*. Because of *Booker* and 3553(a).

3 THE COURT: You don't have to argue about it with  
4 me, because I don't do that. The fact that I happen to  
5 sometimes sentence someone from the advisory guideline range  
6 doesn't mean that that's what I feel I have to do.

7 MR. HOCHBAUM: The plea agreements here, Judge --  
8 the government alleged a sentencing range. They made a  
9 promise in the plea agreement and if the defendant had  
10 accepted it, that they would not argue where within the range  
11 he should fall. They would not ask for upward departures.

12 What we are asking for here in light of what I know  
13 about -- what I believe was an ultimate failure in the  
14 attorney-client communication, that the court consider a  
15 reasonable sentence which would consider the offers made by  
16 the government prior hereto.

17 THE COURT: What do you say about that, Ms. Ryan?  
18 I mean, these are a group of people -- he constantly was  
19 unhappy with Mr. Lashley. We know about the history.

20 Mr. Hochbaum is saying that, you know, you're ready  
21 to give this fellow a -- what? 150 months or something like  
22 that in your plea negotiations. He was caught up in this  
23 situation where there was a global scenario. The others were  
24 willing to -- I think the others were willing to plead. He  
25 was the one that did not want to plead, if I remember



1 correctly.

2 MS. RYAN: That's my recollection as well, Your  
3 Honor.

4 MR. HOCHBAUM: I don't know about that.

5 THE COURT: I recall that everybody was willing to  
6 plead and he was the one that was holding it up.

7 MS. RYAN: Yes.

8 MR. HOCHBAUM: That may be, Judge. But I  
9 understand from special and co-counsel that that role of who  
10 was unwilling to plead changed at various times.

11 THE COURT: I see.

12 MR. HOCHBAUM: But I do know, however, that at  
13 various times when in fact substantial negotiating sessions  
14 went on in MDC, Ms. Obregon was there. Mr. DelValle was  
15 there, representing the other co-defendants. Mr. Lashley was  
16 not. Okay? Now, it may be that because my client felt he  
17 was not getting individualized attention and individualized  
18 advice that he felt, I'm the one to say, I can't plead here  
19 because I'm not getting anything.

20 THE COURT: No. But I think realistically, they  
21 all spoke to each other. Their lawyers spoke to each other.  
22 I mean, I can't be part of plea negotiations.

23 MR. HOCHBAUM: I understand that.

24 THE COURT: If I was a state judge, I could, but  
25 there's a real distinction in that respect between the

1 Federal system and the State system.

2 But I do recall that the others were willing to  
3 plead. I don't know exactly what the plea deal was since I'm  
4 not involved in that level and that he, you know, was holding  
5 it up.

6 I remember Mr. DelValle talking to me about this.  
7 Mr. Musa-Obregon talking about it. It wasn't as if he was  
8 out of the loop because they were all together here with  
9 and/or without Mr. Lashley. And I also remember on the eve  
10 of trial when Mr. Lashley was talking about going down to  
11 Florida, I said no. You've got to be here while these plea  
12 negotiations are unfolding.

13 And I made him stay here. So he was really part of  
14 that process and I was on top of it also and your client, I  
15 think, to my recollection had a large part to play in the  
16 fact that this plea did not come to fruition.

17 Now, you can tell me if I'm wrong, Ms. Ryan.

18 MS. RYAN: That was my recollection as well, Your  
19 Honor. And I could be saying --

20 THE COURT: They were all exasperated about that.

21 MS. RYAN: They were. I'd like to also just go  
22 back again, Your Honor, to the hearing colloquy that was  
23 conducted during negotiation pleas.

24 Not only did the Court refer back to this problem  
25 with counsel creating distance in the cap and the defendant

1 knowingly and intelligently waived problems in the cap there.

2 There was also the standard colloquy that the Court  
3 conducted with respect to what other promises may have been  
4 made to this defendant prior to this plea and basically  
5 making sure that no promises were, in fact, made.

6 THE COURT: We went over that very carefully also.

7 MR. HOCHBAUM: And I looked in the transcript and  
8 it was a masterable job in that regard.

9 THE COURT: We have a mutual admiration society.

10 MR. HOCHBAUM: I still think that the import of the  
11 plea negotiations are that at some point everybody involved  
12 in this case, excepting me, was prepared to say that  
13 sentences and plea negotiations which ranged from 150 up to  
14 188 months, went from 165 and I think at some point,  
15 everybody was prepared to say they were reasonable.

16 I'm simply asking this Court to take that into  
17 consideration on fashioning a reasonable sentence here. So  
18 let's divorce ourselves on who decided not to take the plea,  
19 why pleas were offered and not. It seems to me that that's a  
20 factor that the court should consider what is an appropriate  
21 sentence.

22 THE COURT: Yes. But you know, I --

23 MR. HOCHBAUM: I just want to cut it short, Judge,  
24 and say that my final analysis is in light of what has gone  
25 on here today and in light of the distinction between my

1 client and the Carreto brothers, difference in age,  
2 difference of the years that he was involved in the  
3 conspiracy, the difference in his role, that the court should  
4 consider a sentence of 20 years as a reasonable sentence.

5 I don't believe my client would be happy -- or is  
6 happy that I'm suggesting that. But it seems to be  
7 appropriate in light of what's happened today and what we've  
8 heard for me to give at least the court some unofficial -- I  
9 don't know whether it's --

10 THE COURT: No. That's okay.

11 MR. HOCHBAUM: -- guidance as to where I deem an  
12 appropriate sentence is in light of all the distinctions that  
13 we made here.

14 THE COURT: Very good. Let me hear the government  
15 quickly and then we'll speak to Mr. Alonso.

16 MS. RYAN: Yes, Your Honor. I'd just like to make  
17 one point in response to Mr. Hochbaum's point about prior  
18 plea offers I think that were made by the government and what  
19 those ranges were and at that point, everyone thought they  
20 were reasonable.

21 I'm sure the court can understand why months in  
22 advance of trial, the government's view of what would be a  
23 reasonable sentence particularly to a -- I believe that most  
24 of these standard agreements were substantially less than 27  
25 counts of the conviction.

1 I can't remember now if it was one count or if it  
2 was four counts or if it depends on how many victims the  
3 defendants in question were personally responsible for, but  
4 that certainly would also be something the Court should  
5 consider when thinking back to a prior range that was offered  
6 in advance of trial that would save the government the time  
7 and expense of a trial and would save the victims the trauma  
8 of having to testify at the trial. That would be to the  
9 Court what would be reasonable --

10 THE COURT: Let me ask you this. I gave very harsh  
11 sentences to the other defendants, but -- and I don't have  
12 any factual record as to what those prior plea offers kept.  
13 Because my sense is that under Rule 11, I'm not privy to  
14 that.

15 MS. RYAN: That's right, Your Honor.

16 THE COURT: Now, could it be argued, however, on  
17 some sort of a collateral basis that since the government's  
18 willing to offer these global pleas and in sentencing, it was  
19 offering to significantly less than what the court sentenced  
20 that my sentence would not be reasonable, and does that have  
21 any legal legs to it, in your opinion?

22 MS. RYAN: No, Judge. I think that the court's  
23 reasons for the sentences that were given previously -- all  
24 those facts under 3553 -- that the court was very aptly and  
25 correctly identified --

1 THE COURT: So it's your view of the law that the  
2 court cannot take into consideration in deciding what's  
3 reasonable any plea offers that the government may have made?

4 MS. RYAN: I've been thinking about this since I  
5 received Mr. Hochbaum's letter. I think it is a very  
6 creative argument --

7 THE COURT: And that's why I'm raising the issue.

8 MS. RYAN: I understand, Your Honor. And I think  
9 that he's --

10 THE COURT: Is it a circumstance under 3553(a),  
11 *etcetera* for the court to consider -- I don't think there's  
12 any law on that at all.

13 MS. RYAN: I don't expect that there is. I think  
14 that Mr. Hochbaum was careful in crafting his argument to try  
15 to avoid the (indiscernible). I'm not sure if he's  
16 succeeded.

17 THE COURT: Yes. I don't know whether I can take  
18 it into consideration as a factor. Under Rule 11, I'm not  
19 allowed to participate and have knowledge of prior plea  
20 negotiation.

21 I just raise this because, you know, it was August  
22 when we trotted out the other defendants before the Circuit  
23 Court but Mr. Hochbaum raises it -- it's interesting to  
24 engage in conversation about it.

25 All right. Anything else that you wish to say, Ms.

1 Ryan? Okay.

2 MS. RYAN: Your Honor. I just -- again. That the  
3 3553 factors here in this case weigh heavily of I think what  
4 would be a reasonable sentence in view of the guidelines.

5 THE COURT: Okay. We have your position. Let me  
6 hear from Mr. Alonso. You can speak to the Court now.

7 (Pause.)

8 MS. RYAN: Your Honor, I'm sorry. Before the  
9 defendant speaks, I just noticed I may not have marked it  
10 down and I don't know whether the court required us to or  
11 whether Mr. Hochbaum --

12 MR. HOCHBAUM: I made the objection.

13 THE COURT: (Indiscernible) because it's so easy to  
14 slip up, you know, on a whole day's proceeding. Need I be  
15 concerned about the fact that you went over this very  
16 carefully? Obviously, you did from your comments.

17 MR. HOCHBAUM: Yes, I did, Judge and in fact, Mr.  
18 Lashley did as can be seen by the nature of the objections  
19 that he filed prior to my being on this case.

20 MS. RYAN: Thank you.

21 THE COURT: I'm satisfied -- I should be satisfied  
22 whether you had ample opportunity to review everything with  
23 Mr. Alonso. You used a Spanish interpreter to communicate  
24 with him as well?

25 MR. HOCHBAUM: That's correct, Judge.

1 THE COURT: -- and you're satisfied that he  
2 understands its contents?

3 MR. HOCHBAUM: Yes.

4 THE COURT: Okay.

5 MS. RYAN: Thank you.

6 THE COURT: Thank you for pointing that out. Do  
7 you wish to speak to me, Mr. Alonso, before sentence is  
8 imposed? You have the right to do so. You do not have to do  
9 so, but it is your prerogative.

10 DEFENDANT ALONSO: What I want to say, Your Honor,  
11 is that Mr. Lashley didn't give me the proper advice. I have  
12 here a piece of paper that mentions some of my rights which  
13 Mr. Lashley never did.

14 THE COURT: You see, the problem, Mr. Alonso, is  
15 that that's not what you told the Court. That I  
16 painstakingly flushed all of that out because I'm getting  
17 smart in my old age.

18 And I know that there are going to be proceedings  
19 after today's sentence. And in reference to them, you may  
20 recall when we took your plea to what we call Section 2255  
21 and you raised ineffective assistance of counsel.

22 We get those applications very frequently and I was  
23 trying to nip that in the bud. That in taking extraordinary  
24 efforts to make sure that Mr. Lashley and you were in sync,  
25 that you were satisfied with his representation.



1 I'm not going to repeat what I already pointed out  
2 to you before. I gave you ample opportunity to say no. But  
3 you said that you're satisfied. I could not do more than that.

4 For you to come before me now and tell me you have  
5 a list of grievances against Mr. Lashley is not becoming of  
6 you, considering the efforts I made back in April of 2005 to  
7 cover all of that.

8 And you may recall how careful I was in making sure  
9 that you had proper counsel and how I spoke with Mr. Lashley  
10 and how I made efforts to safeguard your rights.

11 But for you to come now, tell me you're not  
12 satisfied with what I did and what Mr. Lashley did, doesn't  
13 speak well for you in my humble opinion.

14 But if you want to persist in not taking  
15 responsibility here, you know, you can say whatever you  
16 choose, but I just want to caution you that it doesn't speak  
17 well for you.

18 (Pause.)

19 THE COURT: Anything else you wish to say, Mr.  
20 Alonso? You could say things -- you don't have to -- like --  
21 I'll try my Spanish here. Lo siento. That's one  
22 possibility. I'm not saying you have to say that, but you  
23 could say those types of things.

24 THE INTERPRETER: I will now interpret the phrase  
25 that the defendant uttered before.

1           DEFENDANT ALONSO: I have many things to say.  
2       Amongst the things that I have to say is that there are  
3       victims and I am sorry. I am very sorry for it.

4           I ask for your forgiveness.

5           THE INTERPRETER: Interpreter's correction.

6           DEFENDANT ALONSO: I ask for your mercy. And  
7       that's it.

8           THE COURT: All right. You seem to be somewhat  
9       contrite. Of the three defendants here, you seem to be the  
10      most contrite.

11          And as I indicated before, I put you in a different  
12      category because you're a young person and to some extent  
13      when you were 12 years old, you got involved in this  
14      activity. Is that how old he was at the time?

15          MR. HOCHBAUM: Well, the age -- the conspiracy he's  
16      charged with --

17          THE COURT: Right. But he was older when he got  
18      involved.

19          MR. HOCHBAUM: -- when he was 12. He didn't get  
20      involved until he was 17 or 18.

21          MS. RYAN: I think that's right, Judge.

22          THE COURT: He's still a young person. You know,  
23      to some extent, considering that he was 17 or 18 when he got  
24      involved which would put him in a different category, makes  
25      him a little bit more susceptible to being part of the gang.

1 MS. RYAN: That may be true, Your Honor. I will  
2 say that I think the other defendants started when they were  
3 quite young as well and just continued longer into their  
4 adulthood.

5 THE COURT: It's true. They were older when -- I  
6 think one was 33. The other was 40. All right. There's  
7 somewhat of a nature for correction.

8 But I also, as I mentioned before, considering the  
9 fact that he was not an organizer -- that he would become one  
10 in the future. I'm not going to speculate. So his role was  
11 different.

12 And I'm also impressed by how he's conducted  
13 himself while he's been incarcerated and I have these  
14 certificates of Bible study. They are legitimate. This is  
15 different than the other fellows.

16 He seems to have some recognition of this was not  
17 the type of life he should be leading in the future, so I  
18 think that there are significant differences when I consider  
19 his personal circumstances.

20 Now, of course, the seriousness of the offenses  
21 remain because he pled to all 27 of them. There's no  
22 difference in that respect and of course the need for  
23 deterrence is paramount and protecting the public from any  
24 further crimes of the defendants, but he's going to have a  
25 considerable amount of time to continue his Bible studies in

1 school and in jail and hopefully the public will be protected  
2 when he gets out of jail. And he'll still be a relatively  
3 young man.

4 I find that a reasonable sentence in respect to  
5 Counts 2 through 6 is 25 years. Now that's concurrent.  
6 There'll be five years of supervised release with a special  
7 condition that he be deported. He may not re-enter the  
8 United States illegally.

9 On Counts 1 and 7 through 27, the sentence is five  
10 years each. And all of that will be concurrent to each other  
11 and to the other sentence is there's a \$2,750 special  
12 assessment.

13 If he doesn't have the ability to pay a fine, there  
14 are general conditions of supervised release that can be made  
15 to the court.

16 Just hand it to the defendant. They're in Spanish.  
17 They have to be read by him.

18 He has the right to appeal. If he cannot afford  
19 counsel, he can ask for counsel to be appointed by reason of  
20 indigency. And Mr. Hochbaum will make sure that his current  
21 rights are protected. That has to be done by filing a notice  
22 of appeal within ten days after judgment -- written judgment  
23 is entered. And perfect it within 30 days thereafter unless  
24 he gets an extension of time from the Court of Appeals to  
25 perfect the appeal.

1 I think that's covered for on the basis it's ten  
2 after 6:00. Is there anything I may have inadvertently left  
3 out?

4 The sentence I've given is below the advisory  
5 range. So I took in that consideration as well as all of the  
6 factors set forth in 3553(a) and then Mr. Hochbaum, as I  
7 would expect, rendered valuable assistance to his client.

8 Anything else?

9 MS. RYAN: I don't believe so, Your Honor.

10 THE COURT: I'm not going to deal with the  
11 restitution issue again.

12 MR. HOCHBAUM: That's fine.

13 THE COURT: I expect that I'm not going to have to  
14 come back again for another sitting here, but once again, I  
15 don't want to preclude the gentleman from exercising his  
16 legal entitlements. That concludes the sentence today.

17 MR. HOCHBAUM: I just want to say that on behalf of  
18 my client, I would like to thank for its reasonable  
19 consideration here. And that I will on receipt of the  
20 judgement, file a notice of appeal on his behalf.

21 THE COURT: Okay. Very good.

22 MS. RYAN: Thank you very much, Your Honor.

23 THE COURT: Thank you.

24 (Proceedings concluded at 6:05 p.m.)

25 I, CHRISTINE FIORE, court-approved transcriber, certify

